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by Pamela Dittmer McKuen

# ASSOCIATION SERVICES & CONTRACTS IMPACTED BY CORONAVIRUS

*MANAGEMENT COMPANIES AND THEIR CONTRACTORS PIVOT TO THE NEW REALITIES OF A LETHAL VIRUS*

**W**hen the World Health Organization declared a global health emergency on January 30, the idea of an incurable, lethal virus that rocked the world seemed like something from a sci-fi movie. Back then, we heard bits and bursts about rising infections and resultant deaths spreading from the origin in Wuhan, China, and into Southeast Asia and the United States.

A pandemic seemed far away until Americans started dying. The first was initially thought to have occurred in Seattle on February 29, but post-mortem testing revealed two earlier deaths in the San Francisco area.

In early March, Gov. J. B. Pritzker began issuing a series of orders to minimize public gatherings in an effort to slow transmission of the virus. (COVID-19 stands for “novel coronavirus that emerged in 2019.”) Schools were closed, and bars and restaurants were banned

from offering indoor dining. The strongest order came on March 20 and contained a shelter-at-home mandate for all but essential workers. Anyone who could work from home was urged to do so. Face masks and social distancing became the norm.

Chicago mayor Lori Lightfoot laid out additional orders like closing the lakefront and trails.

The list of essential workers and businesses includes first responders, health care workers, grocery and hardware stores, many social service organizations, media, construction and utility workers, and building management and maintenance. Many businesses temporarily shut down if they could afford it. Others, sadly, closed permanently.

On May 5, Pritzker announced a 5-stage regional reopening plan contingent upon meeting certain metrics. As of this writing, the state has cautiously entered Stage 4, which

means movie theaters, fitness centers and restaurant dining rooms may open with limited capacity. Group functions are capped at 50 people. Lightfoot announced a similar but more restrictive reopening.

The fifth and final stage will not commence until a vaccine or highly effective treatment becomes widely available.

COVID-19 continues to rage throughout the world with more than 10 million known infections and 500,000 known deaths. Illinois is one of the few states where daily numbers have been decreasing. Whether that is a trend or merely a pause remains to be seen. We could stay in Stage 4 for many months, even longer. Or, if numbers go back up, we could go backward to earlier stages. Daily life and future planning are uncertain for everyone.

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**New Realities**

Like many business sectors, community associations have been forced to revamp their procedures and adapt their operations. Condo Lifestyles checked in with several Chicago-area management professionals to see how they are faring with today's new realities. Here's what we learned:

"Things are still going on—they are just being done differently," says Michael Donnell, regional director of onsite management at FirstService Residential of Illinois in Chicago.

"We are implementing the latest guidance and slowly getting building operations back to as normal as can be, safely."

"Community Specialists has been very aggressive in pursuing information, policies, practices and protocols to be implemented for the protection of the unit owners in the buildings we manage," says Lawrence Puder, technical operations manager at Community Specialists in Chicago.

Among the resources he names are CDC (Centers for Disease Control and Prevention),

World Health Organization, Chicago Department of Buildings, Chicago Department of Public Health and Illinois Department of Public Health. Community Specialists has also consulted with engineering, sanitation and cleaning firms; labor unions; signage and safety supply companies; association attorneys; and more.

**Managers are working from home offices.**

Association managers for Hillcrest Property Management in Lombard had the option to work from home two days a week before the shelter-in-place order took effect, so they were set up to continue the practice. Doing the same for the Client Care Department staff, however, involved a learning curve to adjust the phone tree system and how to handle mailings, says Hillcrest Marketing Director and Property Manager, Tom Purrazzo.

"Luckily, we were able to adapt," he says. "With our dedicated Client Care staff, we were able to have one person a day handle in-office type of work that couldn't be achieved at home."

Donnell reports that many of the managers he works with understand the importance of social distancing and as essential workers, continued working during the Governor's stay-at-home order remotely. As these orders relax, remote workers and managers are returning to offices, with modified safety protocols. Still, homeowners are discouraged from coming in and lingering as they may have done in the past.

"Many management offices are not large enough to implement social distancing requirements so they cannot safely allow visitors," he says. "If the manager is onsite, and someone comes down, we have signs posted everywhere that say, 'If you need something, call,' and someone will assist you. Right now, many residents also prefer assistance from a distance."

During the early days of the pandemic, managers at Community Specialists in Chicago were working from home, says Lawrence Puder, the company's technical operations manager. Their return to their buildings has been slow but steady. Now many, if not all, are at the buildings full-time or perhaps working at home one or two days a week.

"That being said, some of the offices in the buildings remain closed, even though the property managers are there," he says.

"I think our managers have adapted well to working from home," says Thomas Skweres, vice president at ACM Community Management, a division of RealManage, in Downers Grove. "Not having to travel to and from the

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By late June, ACM managers had resumed property inspections and vendor meetings at the appropriate social distance, he says.

### Virtual is the norm for all types of meetings.

The state limits in-person gatherings, but community association governing documents often mandate quorum and frequency of meetings. Managers and board members very quickly caught on to the use and features of videoconferencing technology like Zoom, Microsoft Teams, GoToMeeting and WebEx Meetings. Many are free, with limitations. Homeowners can be invited to observe or participate. If they talk out of turn, their microphones can be muted by the host.

Purrazzo is a long-time Zoom user—and a fan—who helped Hillcrest managers set up accounts and host meetings. He praises the technology’s user-friendliness and versatility.

“I cannot speak for every manager, but conducting board meetings through the virtual platform has been great,” he says. “If I need to show pictures or refer to the board

packet, I can simply hit ‘Screen Share’ on my device. Homeowners and board members alike can view what I am talking about.”

Another advantage is the ability to record meetings, both audio and video.

“If you are taking meeting minutes or your association has a website, this is a great item to have to upload for homeowners in case they want to view the meeting after the fact,” he says.

Says Puder: “The vast majority of board meetings, building project meetings, and proposal requests and reviews has been done electronically via either email, phone conference or video conferencing. For any action taken, the board has to establish a quorum and all actions are recorded in the minutes of the meeting.”

Associations have consulted with their respective attorneys to insure everything is being done properly and recorded properly, he adds.

Despite the reopening plans of Illinois and Chicago, not everyone is ready to jump back into in-person meetings. Virtual gatherings could become a way of life beyond COVID-19 concerns. Some industry experts have suggested that, with the time savings of

virtual meetings, unit owners might be more willing to step up to board service.

“The demographic of our boards is a little of everything, but older board members and tech savvy board members are in no hurry yet (for in-person meetings),” Donnell says. “People in general and especially anyone with a compromised immune system have concerns about in-person meetings as a result of the pandemic.” There are, however, some people that want to get back to in-person meetings.

Several FirstService Residential associations have held a successful virtual annual meeting. Unit owners could participate either via video or phone, so quorum requirements were met.

“Everything appeared the same, but nobody was in the room,” he says.

### Keeping everyone safe is the Number One priority.

Buildings have undertaken a myriad of initiatives in the areas of sanitation and social distancing. Many closed off their amenities such as fitness centers, swimming pools, sun-decks, clubhouses and even laundry rooms. In

*continued on page 33*

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# Living with Covid-19 Today and Planning for Tomorrow

On June 26, 2020, Illinois entered into Phase 4—the Revitalization phase—of the Restore Illinois plan. As in the previous Phases, we are guided by Governor Pritzker’s executive orders and the guidelines established by the Illinois Department of Health and Illinois Department of Commerce and Economic Opportunity. The City of Chicago has also issued its own set of guidelines as part of the City’s Plan to Reopen Chicago.

**G**overnor Pritzker’s executive orders typically are consistent with the guidelines from various agencies within the State of Illinois. The intent of the Executive Order 2020-43 (“Executive Order”), known as the “Community Revitalization Order”, is to resume and expand activities in Illinois, without defeating the progress made to prevent the spread of COVID-19. As before, those persons who are at high risk are urged to stay in their residence and to minimize in-person contact with others to the extent possible. The Executive Order continues to encourage Illinoisans to conduct their activities outdoors.

In Illinois, any individual over the age of 2 years old and able to medically tolerate it, must

wear a face covering over both their nose and mouth, when in a public place and unable to social distance. Social distancing is to be maintained, both indoors and outdoors, to ensure that 6 feet is maintained between people who do not live together. In Phase 4, we can gather in groups of 50 or less. This means that in-person meetings cannot exceed 50 people.

The Department of Public Health and Department of Commerce and Economic Opportunity recommend that at the entrances of all common facilities signs be posted reminding users and employees of the guidelines for face coverings, social distancing and cleaning protocols. Clubhouses and other common gathering rooms can

operate so long as they are used by the lesser of 50 persons or 50% capacity. Users must maintain social distancing while utilizing these rooms. All shared equipment must be disinfected before and after every use.

Health and fitness rooms may reopen so long as the capacity is no more than 50%. If group classes are offered, they cannot exceed 50 people. At all times, persons must be at least 6 feet apart if there are no barriers and 3 feet apart if there are barriers. Equipment is to be sanitized before and after use. Showers and locker rooms are to be sanitized every hour. Saunas, hot tubs, and steam rooms are to remain closed. Face coverings should be worn when not exercising.

The swimming pool can reopen too. Those swimming facilities licensed by the Illinois Department of Public Health can open to a maximum of 50%. Operators, employees and users should wear face coverings when not swimming. All in the pool area should regularly wash their hands or use hand sanitizer, while adhering to social distancing where applicable. Group sizes are to be no more than 50



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people, while maintaining social distancing. Yet, multiple groups of 50 are allowed so long as there is social distancing with 30 feet of distancing between groups and with interaction between the groups discouraged. Temperature checks should be required upon entry for both users and employees. Hand sanitizers should be provided on the deck and in the bather preparation facility. Showers and restrooms should be made available, while being cleaned and sanitized regularly. Similarly, lounge chairs and shared equipment must be sanitized between each use.

As noted above, the City of Chicago has issued its own guidelines for Phase 4. Unfortunately, the guidelines issued by the State and the City differ in some respects. By way of example, the City of Chicago is limiting the capacity of health and fitness rooms to 25%. In addition, face coverings are to be worn at all times when in the health and fitness room—even when exercising. Indoor pools have a capacity limit of 25% or up to 50 people, whichever is less. It can be confusing and overwhelming as we juggle all of the different guidelines, especially when they are not consistent. Yet, it is always best to follow the more restrictive guidelines.

**Planning for 2021**

At this time, we are more than halfway through 2020 and budget season is not far off. Associations need to think about what to do the rest of this year and for 2021. While the effects of COVID-19 have been great, some of the problems surfacing existed before COVID-19; COVID-19 only highlighted the need to change our “old” ways. It is best for tomorrow’s community living if we start implementing these changes today.

The first step is to follow the State and City guidelines. Some people question the Governor’s authority to restrict Illinoisans as it has since March. However, we should avoid focusing on political beliefs and only focus on minimizing the association’s liability during this pandemic. As time goes on, the likelihood for an insurance claim related to COVID-19 continues. Following the local guidelines can only help to prevent an insurance carrier from denying a future claim (to the extent that such a claim is not otherwise excluded from coverage).

**Notifications & Waivers Limit Liability**

Another way to minimize the association’s liability is to remind Owners they are agreeing to use the common facilities at their own risk. Posting the required signs at the entrances will help to remind Owners of this fact. In addition, Owners should be required to sign a waiver, specifically related to the use of common facilities in light of ongoing COVID-19 related concerns.

Second, as contracts expire and new ones negotiated, Boards should discuss with legal counsel what additional terms should be included in contracts to protect the association as the pandemic continues. By doing so, the association will be better

protected should a second wave surface and we experience another shut down. Boards should also review their insurance policies with their agents to confirm that losses due to a pandemic and/or virus are covered. Regardless of the term of the current insurance policy, it should be reviewed now.

**Review Collection Policy & Receivables**

Third, associations should review their collection policy and accounts receivables. Many people have lost their jobs or seen a reduction in their hours. This makes paying assessments more challenging. It is important for Boards to act reason-

ably and to work with Owners now. After all, the collection of assessments is imperative for the associations to remain able to maintain the common areas. This too has a direct impact on the Owner’s asset. In Illinois, community associations cannot currently initiate eviction actions. This stay is currently in effect until at least July 26, 2020. However, this does not prevent the association from collecting the amounts due and owing to it and it does not negate the Owner’s obligation to pay assessments to the association. As associations approach 2021, they will need to budget accordingly to address any shortfalls created by



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2020. It is also important to remember delaying the collection of assessments can only make it harder for an Owner to “catch up” while making it difficult for the association to meet its financial obligations. Stay on top of collections!

### Budget for Increased Cleanings

Along these same lines, as Boards consider 2021, they should include in the operating budget expenses related to increased cleanings. COVID-19 has highlighted how important good and deep cleanings are to community living. Associations should continue with having hand sanitizer, wipes and other similar cleaning products available in the common areas. Likewise, associations should budget for expenses that allow virtual meetings to be conducted on a regular basis.

### Policies, Rules & Regulations

Boards should look at the association’s policies and rules and regulations to determine what changes should be made to address contagious illnesses, not only as it affects Owners and residents, but also employees. For example, the association’s rules should be reviewed to determine how an annual meeting can be conducted either virtually or with minimal in-person contact. Similarly, a process can be adopted to ensure that violation hearings can be conducted in person or virtually. Further, collection policies should include

language that allows more flexibility during a state of emergency or pandemic.

### Employee Issues

It is just as important to address employee matters. The State and City encourage self-assessment for employees to prevent an asymptomatic person or one who is ignoring symptoms from entering a facility. This requires the employee to answer a series of questions upon arrival and in the City mid-shift. Such questions include whether the person has a temperature and is experiencing certain symptoms, with an unknown cause. While the State and City have issued sample questions, for this process to be effective the association needs to have a policy as to how this process will be implemented and what will be done if questions are answered in a certain way. For instance, who will administer the questions and make an immediate decision whether the employee should work that day? What if the employee’s temperature is 100 degrees but less than 100.4 degrees? The board wants to be sure that there is oversight with the self-assessment and that it is effective – not just an employee going through the motions.

### Virtual Meetings

Finally, associations should reconsider how meetings are conducted. Technology has allowed Board meetings to proceed in a virtual format and

in some cases with more Owners in attendance. Virtual meetings ensure a more productive meeting as following the agenda is critical in a virtual meeting. There can also be less interruptions during a virtual meeting so as to allow the Board to conduct its business. A more productive meeting may make being on the Board more attractive to those within your community.

We must remember that we will remain within Phase 4 for the foreseeable future. After all, Phase 5 is when Illinois is restored. This shift will only occur when testing, tracing, and treatment are widely available throughout the State of Illinois. Until we are in Phase 5, meetings cannot exceed 50 people. With perhaps the exception of annual meetings, regular Board meetings can and should continue to be conducted in this way.

### Continue to Learn

As we continue through Phase 4, we will continue to learn more, and it will be through trial and error that associations will determine what works best for their community. However, we do know that change will be needed for the rest of the year and into the next. We also know that it is best not to ignore the world outside and to rest our management on the fact that our buildings are private properties. We want our Owners, residents and employees to know they are in as safe and healthy of an environment as possible. ■



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by Howard S. Dakoff, Esq. – Levenfeld Pearlstein, LLC  
Adam T. Kahn, Esq. – Levenfeld Pearlstein, LLC

## CONDUCTING SAFE, SOCIALLY DISTANCED BOARD ELECTIONS

The Coronavirus pandemic has caused condominium associations to rethink their standard operating practices. From conducting virtual board meetings via videoconference (Zoom or Skype, for example) to reconfiguring common element amenities and updating rules, policies, and protocols for such amenities to help promote social distancing, condominium associations are getting creative to safely get back to “normal” (or as close as possible to our previous definition of “normal”).

**C**ondominium board elections are no exception to this trend. At present, in-person annual meetings where many unit owners gather in a single room and cast their ballots for board elections are no longer advisable and may pose a health risk due to the potential spread of Coronavirus. This does not mean, however, that board elections should be postponed indefinitely, especially since there is no certainty as to when the CDC’s social distancing guidelines will expire. Rules per-

mitting electronic notice and voting can also be adopted per Sections 18.4(s) and 18.8 of the Illinois Condominium Property Act.

With a little proactive planning and creativity, elections can safely proceed with minimal disruption. Below are some strategies to safely and conveniently conduct board elections during the Coronavirus pandemic:

- 1. Relying on Proxies to Limit In-Person Gatherings.** Proxies permit a unit owner to appoint a proxyholder to cast a ballot on

their behalf in person at the meeting. Naming the same default proxyholder reduces the number of persons required to be physically present at the annual meeting to cast ballots since only the proxyholder must show up at the meeting in person to vote on the unit owner’s behalf. Said another way, instead of dozens of unit owners (or more) appearing in person to cast ballots, a single proxyholder can briefly attend the voting portion of the meeting on behalf of those unit owners to register their vote, with the rest of the annual meeting being held via videoconference or teleconference. To accomplish this objective, a designated proxyholder for all proxies would be used (usually an officer of the board) on the directed proxy

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whereby unit owners designate their preferences for voting for candidates and the proxyholder must honor those candidate choices. Using proxies for board elections is already the standard practice in many condominium associations, but emphasizing the above approach will minimize person-to-person contact at an annual meeting and adhere to CDC guidelines regarding social distancing in order to more safely conduct annual elections.

**2. Adopt Rules for Mail-In Balloting.** Mail-in balloting (i.e., “absentee voting”) allows unit owners to submit their ballots directly without attending the annual meeting. Unlike with proxies where the proxyholder must show up in person to cast a ballot on behalf of unit owners, with an absentee ballot, there is no need for anyone to show up in person to register their vote. The “catch” is that a condominium association must adopt a rule to allow for mail-in balloting at least 120 days before the election, so associations would be wise to proac-

tively consider adopting mail-in balloting rules well in advance of the next election.

Note: if a condominium association adopted rules allowing for mail-in balloting, then proxies cannot be used in board elections once the mail-in balloting rules are in effect.

**3. Implement Procedures for Safe In-Person Voting.** In-person voting can still be conducted with adjustments to adhere to CDC guidelines, including social distancing. Strategies for safe in-person voting include extended meetings (more time to cast ballots so less congestion), staggered entry into the meeting room, adding physical markers to indicate an appropriate social distance and, of course, providing hand sanitizer and encouraging attendees to wear appropriate masks or face coverings. Utilizing proxies or mail-in balloting (as permitted) along with modifying in-person voting procedures is recommended to minimize person-to-person contact and avoid large gatherings.

**4. Conduct the Non-Voting Portion of Annual Meetings Virtually.** Like with board meetings, the non-voting portion of annual unit owners meeting should be conducted via videoconference or teleconference. Unit owners can register their vote in advance either by proxy or mail-in ballot, as applicable, or in-person at the meeting (see above) and dial into the meeting from the safety of their own unit.

Board elections are essential for the proper operation of condominium associations and help ensure that unit owners have a voice in how their association is run. By thoughtfully adapting election procedures, condominium associations can continue to hold elections safely and with minimal disruption. ■

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# in Memoriam...

**Rosemarie Wert** recently passed away and we will miss her greatly. One of the founders of Community Specialists, Rosemarie was a pioneer in the condominium management industry. She started many years ago with the development firm of Romanek Golub and, after holding an executive position with Equity, she later joined Ron Hickman as co-founder of Community Specialists.

Rosemarie had many honors in her illustrious career. To mention just a few: she was a past President and a long time board member of the Apartment Building Owners and Managers Association (ABOMA) of Illinois; she was a member of the Illinois Legislative Action Committee; and Rosemarie was honored with the Lifetime Achievement Award from MCD Media. She was one of the original Advisory Board members of Condo Lifestyles and was instrumental in helping sustaining the pub-



lication over the years.

Mr. Hickman reflected on Rosemarie, "As important as her industry accomplishments are, I know that nothing was more precious to her than her family (who include her brother Andy Warner,

also a long time member of the Community Specialists family). Since retiring more than three years ago, Rosemarie spent time visiting her sons and daughters-in law, her granddaughters and her two great granddaughters."

He continued, "I am very proud to say that Rosemarie was my business partner and friend for many years. Rosemarie is irreplaceable and we have all been made the better for her presence in our lives and in the world. I pray for comfort and peace to her family and her many friends." ❖

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by Rachel Irwin – Keay & Costello, P.C.

# Impact of COVID-19 on Assessment Litigation

On April 23, 2020, the Governor enacted various executive orders; among them Executive Order 2020-30. This Executive Order specifically suspended the initiation, filing and prosecution of residential eviction actions. Due to the generality and vagueness of Executive Order 2020-30, associations (and admittedly counsel) were uncertain of their statutory ability to collect delinquent assessments under the Illinois Eviction Act.

**O**n May 29, 2020, the Governor extended the moratorium on the initiation and filing of new eviction matters. Despite this moratorium on eviction actions, a Board of Directors' fiduciary duty to collect assessments does not cease. Even post-pandemic "normalcy" and expiration of the moratorium, it will be difficult for associations to collect delinquent assessments through the Eviction Act. So how should associations move forward with assessment collection?

## Understand How Eviction Actions Are Viewed in Future


It is important for associations to understand how future association-initiated eviction actions will be viewed in light of the pandemic. Traditionally, judges enter eviction orders for delinquent assessments, but with reluctance. Post-pandemic and expiration of the eviction moratorium, judges will be even more reluctant to enter eviction orders for delinquent assessments and will likely use their judicial discretion to assist unit owners.

What will this judicial assistance look like? Judges can easily scrutinize account ledgers and waive soft costs, such as late fees, fines, administrative fees, and even legal fees. Judges may also extend the statutory minimum of sixty (60) days up to the maximum one hundred eighty (180) days. Due to the uncertainty of this judicial atmosphere, an association should consider alternative legal remedies to collect delinquent assessments if collection is necessary now and for the foreseeable future.

## Not the Sole Remedy

While the Illinois Eviction Act appears to be the most preferred legal avenue due to its efficiency and quickness, it most certainly is not an association's sole legal remedy. Associations may consider lien foreclosure and small claims actions. Small claims matters are sim-

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ilar to an eviction action. In the small claims action, the association seeks a monetary judgment against the unit owner for the delinquent assessments. However, the association does not have any statutory right to seek possession of the unit in a small claims action. Another alternative is lien foreclosure actions. Pursuant to Section 9(g) of the Illinois Condominium Property Act, any delinquent condominium assessments shall become a lien against the property. Such a lien can be foreclosed under the Illinois Mortgage Foreclosure Law.

### Small Claims or Lien Foreclosure


Currently there is no moratorium on collection of HOA or condominium assessments and therefore a small claims action or lien foreclosure can be initiated, filed and prosecuted immediately. Small claims actions are viewed as a less drastic approach and judges will likely be more “comfortable” entering small claim money judgments right now and post-pandemic. Lien



foreclosures are more drastic than small claims, but due to the litigious nature of foreclosure actions (longer timeline between filing an action and entering judgment), judges may feel more comfortable entering judgments on foreclosures than evictions.

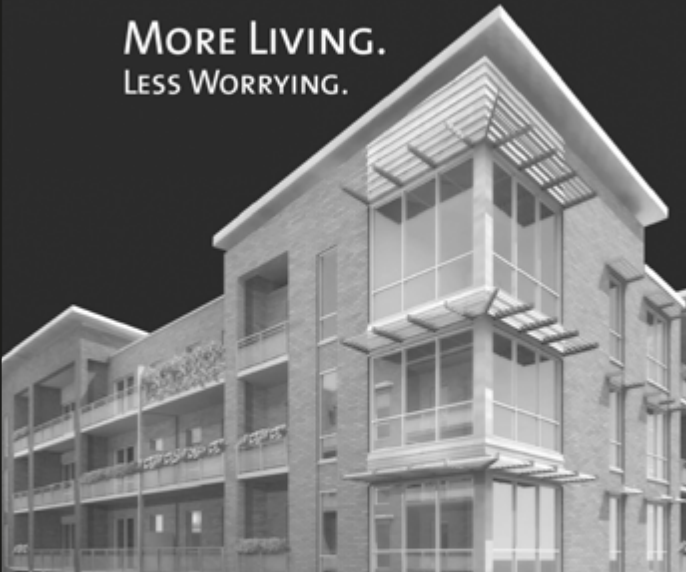
### Bottom Line

Bottom line? Although an association may prefer assessment collection through the eviction courts, it may not be feasible until normalcy is restored. Unfortunately, the legal community cannot guarantee if or when the economy will return to “normal.” Unit owners may struggle financially even more than the economic crash in 2008. Further, the legal community cannot guarantee if or when the courts will view association-initiated eviction actions with less scrutiny. At least for the time being, Boards should consider alternative assessment collection options, including the remedies discussed in this article. Boards may also consider being even more accommodating to delinquent unit owners before officially turning them over for collection. By doing so, boards can settle their financial concerns and continue to fulfill their fiduciary duty to its membership. ■



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by Gabriella Comstock and Dawn Moody - Keough & Moody, P.C.

# MYTH BUSTING ASSOCIATION TRUTHS

**W**e recently presented at CAI Illinois Condo-HOA 2020 Conference and Expo, at which time we were “Myth Buster” during the presentation. Myths are widely-held beliefs or truths that Board members and/or managers believe apply universally to all community associations. They originate from word of mouth, Google, the internet, newspaper articles, and even legal opinions specific to one community association. Often people are uncomfortable asking if the less obvious myths are true. So, we thought we would take the fear out of asking and just start busting the myths! Here are a few examples of less obvious myths.

**MYTH # 1: “You must be a member in good standing to be elected to (or to remain on) the Board of Directors.”**

The only time a member of the Board of Directors must be in good standing to be elected to the Board of Directors is if this is a requirement within the community association’s declaration or bylaws. Even then, there are two schools of thought among the attorneys in our industry. Some believe such a requirement violates the terms of Section 18 of the Illinois Condominium Property Act. Others believe it is a valid requirement so long as it is within the association’s declaration and bylaws. Regardless, though, since it is part of each Board member’s fiduciary duty to strictly adhere to the association’s governing documents, shouldn’t that mean that they will be a member in good standing at all times?

**MYTH # 2: “Our management company can assess a fine immediately upon the occurrence of a violation.”**

Both the Illinois Condominium property Act and the Common Interest Community Association Act provide that the Board, after giving notice and opportunity for a hearing, can levy a reasonable fine. Therefore, fines should not be assessed until that notice and an opportunity for a hearing are given to the alleged violator.

**MYTH # 3: “Owners can appeal the Board’s decision following a hearing on a violation.”**

(Why because if at first you do not succeed - try, try, try again??) An alleged violator certainly has the opportunity to attend a hearing with the Board to contest a violation. This opportunity should not be denied even if the Owner does not request it until he/she has violated the same rule five times. Yet, unless otherwise stated in the Rules and Regulations, an Owner is not entitled to a further hearing. (And if your rules do contain this language, talk to your attorney about revising your rules!) The only exception should be if there is new information that the Owner did not have at the time of the first hearing.

**MYTH # 4: “The Complaint procedure required by the Ombudsperson Act applies to rule violation hearings.”**

The Ombudsperson was created to provide assistance to resolve a dispute between a Unit Owner and the commu-

nity association that relates to a violation of the Condominium Property Act or the Common Interest Community Association Act. The Ombudsperson does not enforce the community association’s regulations. The Mission of the Ombudsperson is to provide community associations with a better understanding of the rights and obligations imposed by the Condominium Property Act and the Common Interest Community Association Act. Since the Ombudsperson is not intended to assist in enforcement of regulations, the process should not be the same.

**MYTH # 5: “Case law is not law.”**

It is law and this is true even if the case was decided by an Illinois Judge that does not sit in your appellate court district. Case law is defined as “the law as established by outcome of former cases.” Trial court judgments are not “law.” They are the opinions of one judge on the facts of the case. Yet, they should not be disregarded. However, appellate court decisions are generally “law.” So yes, all Illinois associations need to follow Palm and 111 E. Chestnut!

There are many more myths within our industry. How does one avoid falling for a myth? If the source of the statement cannot be verified, ask legal counsel. Recognize the type of association you live within or manage and be certain you are acting under the law that properly applies to your community. The law does change and often the facts of a situation or the terms of an association’s governing documents can affect the application of the law. Therefore, it is best to seek legal advice when in doubt—even if it is only to find out whether an issue requires an opinion. ■■



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by Salvatore Sciacca – Chicago Property Services

# Top 10 Reasons Why Homeowners Should Attend Board Meetings

Are you a homeowner and are you part of a condo association, townhome association or HOA? What is your desired community living experience given that you are part of an association? Are you looking to maximize your living experience within the community or are you simply satisfied with homeownership and are not looking to get involved within the community?

More likely than not, you are looking to maximize the benefits of living within a community. As a result, it is important to know the best ways to accomplish your community living goals. Community living has many perks if you know the secrets to maximizing the benefits.

## Virtual Board Meetings

So how do you maximize the benefits? One of the most important ways to ensure benefit is to attend the board meetings. Yes, I know. This is asking a lot especially in today's busy world. You probably are thinking that you have many more important things to do other than attend association board meetings. But I can assure you that the time investment required is well worth it. These days, the board meetings are probably held virtually via an online conferencing tool such as WebEx, Gotomeeting or Zoom. Over the next several months, the board meetings will probably start to take place in person as the

State of Illinois is in Phase IV and hopefully continues toward Phase V and further loosening of the Covid-19 restrictions.

Ironically, most people do not attend board meetings. Some homeowners attend board meetings at first but then stop attending. Others attend board meetings only if the board is proposing to increase the assessments or have a complaint to share with the board. While others do not attend because they are too busy. Another group of homeowners probably do not attend the meetings because they do not feel that attending the board meetings is a productive use of their time. Regardless of the reasons why homeowners attend or don't attend board meetings, it is important to note that the highly effective and efficient board meetings are the most important element of a functioning community association. As a result, I would like to share the top 10 reasons as to why homeowners should attend the board meetings:

### 10. Get to know the neighbors.

This is critical for many different reasons. If you have a leak coming from your neighbor's unit, you don't want to be knocking on a stranger's door for the first time when there is a water leak issue. It is also great to have friends close by in the event you need a cup of milk in case you are baking banana bread late at night and the grocery stores are all closed.

### 9. Get to know the board of directors.

You want to have a good relationship with the board of directors. The better you know them, the more influence you might have on the community even without having to serve on the board. Also, in the event there is some conflict between you and the association or another homeowner, it is better to know the board than to be a stranger to the board.

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**8. Learn about upcoming projects.**

The more you are in the know, the more you can plan out your finances. Often, the board plans capital projects years in advance and in some cases, they might involve special assessments. If you are selling your unit, it is really important to know things that are happening currently and in the near future as well.

**7. Express your opinion on important topics.**

Do you love expressing your opinion? Your opinion matters especially for board members that want to hear from homeowners. The board of directors typically have the final say on most everything that goes on around the association. However, some boards do seek input from homeowners and the best way to have a say is to attend the board meeting.

**6. Influence the board of directors on their decision making.**

Do you want to have an impact on the association without necessarily serving on the board? Maybe the board is looking to remodel the lobby, stairwells, and hallways. If your association has committees, then you might consider participating on one of the committees that interest you. Otherwise, make sure to attend the board meeting and speak up and have your say.

**5. Give support to the board members.**

Board members really appreciate it when homeowners attend the board meetings and show their appreciation for their dedication and service. Board members are spending their personal time helping run the association in an unpaid capacity and it is important for the homeowners to show appreciation for their fellow board members.

**4. Volunteer for association projects.**

Do you have a specific skill set that can benefit the community? Perhaps you are an attorney, an interior designer, or a project manager. Why not attend the board meetings and contribute some of your time and efforts towards association projects? This is a great way to ensure that projects are successfully completed.

**3. Create a working relationship with the property manager.**

You may not realize this but sooner or later you will probably need to communicate with the property manager of your association. And the better you know the manager and the better your working relationship with the manager, the better he/she will respond and support your request. It is just human nature.

**2. Get better response times when you need something.**

The same is true when you contact a fellow homeowner or board member. The better you know them, the better the response will be. When you need something, you will want a timely response and your odds are stacked in your favor if you are reaching out to someone you know and have built a relationship with previously.

**1. Build a network within the community that can enhance your career.**

What is the best way to build a referral network? Create it through your network of friends and family. So why not create friendships with your fellow homeowners and board members and use it to your advantage.

**SUMMARY**

Why should you attend the board meetings? Is it to file complaints about noisy neighbors? Or to complain about the rising assessments? The initial reaction from most owners is to avoid them and deal with community association matters only when necessary. Although this might seem like a fair and logical approach, the opposite is true. Attend the board meetings, get to know your neighbors, board members and management staff and reap the rewards. It is a great investment and a guaranteed payback. ■■

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# INDUSTRY HAPPENINGS

## The Habitat Company

The Habitat Company, a leading U.S. multifamily developer and property manager, recently announced that the firm has been awarded property management of Metropolitan Tower, a 234-unit luxury condominium building located at 310 S. Michigan Ave., effective July 1.

“With its neo-classical architecture and distinctive blue beehive beacon, Metropolitan Tower is an instantly recognizable stalwart of Chicago’s famed skyline,” said David Barnhart, vice president of condominium management at Habitat. “This landmark residential tower, which offers protected views of Grant Park and Lake Michigan from its prime location on Chicago’s Cultural Mile, is a jewel in Habitat’s growing condominium portfolio. We are thrilled to have been awarded management of this historic property.”

Constructed in 1924 and widely known as the city’s first high-rise, the 30-story Metropolitan Tower building was originally home to office space and converted to condominiums in 2007. Designed by Graham, Anderson, Probst & White, the storied architectural firm behind some of Chicago’s most famous buildings, Metropolitan Tower includes condominium residences ranging in size from one to four bedrooms, a six-story heated garage and ground-floor retail along Michigan Avenue and Jackson Boulevard that includes a CVS Pharmacy, Kilwin’s Chocolate, FedEx and RetroFitness.

“As we evaluated property management companies, we were impressed with Habitat’s extensive experience managing mixed-use buildings and reputation among condo management firms. Combined with Habitat’s ongoing commitment to provide exceptional customer service to residents and condominium association board members, we knew this was the right choice,” said Brian Whitlock, president of the board of directors of the Metropolitan Tower Condominium Association.

“We are looking forward to establishing a valuable partnership with Habitat to provide turnkey building oversight to superbly serve Metropolitan Tower’s residents and commercial tenants.”

Metropolitan Tower is located adjacent to Grant Park and within walking distance of Chicago’s world-class museums, art centers, educational institutions and retailers. The property boasts 24-hour door staff, a fitness center, bike storage and a sundeck with landscaped terrace on the 23rd floor offering sweeping views of Lake Michigan and the famed Buckingham Fountain.



➤ **Metropolitan Tower Condominium**

## The RealSeal, LLC

The RealSeal is pleased to announce that **Sheila Malchiodi** has joined the company as Business Development Manager. Sheila has been in the Chicagoland multifamily and commercial market for over 10 years providing exceptional service in the restoration and renovation industries. As a speaker, educator, and master networker, her expertise will make an impact on multifamily properties here in Chicago and suburbs for The RealSeal. Sheila is a past President and currently serves on the Board of Directors of the CAI - Illinois Chapter. She also serves on MCD Media’s Condolympics committee that benefits Special Olympics. The RealSeal, LLC specializes in basement waterproofing, foundation crack repair, sump pump replacement, drain tile installation, window well replacement, Polyjacking, spray foam insulation, structural repairs and over the top seepage in the greater Chicagoland area.



➤ **Sheila Malchiodi**





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# INDUSTRY HAPPENINGS

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↗ Tribune Tower, Chicago, IL

**Jessica Towles**, Vice President of Suburban Property Management at FirstService Residential, has been voted the U.S. President-elect of CAI for 2021. She will assume the position of President in 2022. We are proud of her accomplishments.

FirstService Residential also recently announced that the firm has been awarded management of two of the most iconic and prestigious buildings in the City of Chicago.

Tribune Tower Residences are the ultra-luxury, high-end condominiums built in the historic Tribune building on North Michigan Avenue. "We are honored to be entrusted with the management of this spectacular Chicago landmark building," said Asa Sherwood, President of FirstService Residential. "The historical nature of

this building is an excellent connection with our own deep roots in Chicago, and our expertise with ultra-luxury high-rises will be a great fit with expectations of the Tribune residents." Tribune Tower boasts 162 residences and 55,000 square feet of amenities nestled along the Chicago River. Many of the original architectural details have been preserved during the development.



↗ Vista Tower, Chicago, IL

Vista Tower is the third tallest building in Chicago and the newest residential high-rise in the Lakeshore East neighborhood. "We are proud to bring our experience in managing ultra-luxury high rise condominium buildings, which incorporate high end hotel and concierge services," Sherwood said. "Its three towers of varying heights and 101 stories form a unique shape, reminiscent of crystal, that will become a new icon in the Chicago skyline." Vista Tower is located in one of the most exclusive neighborhoods in Chicago, with impressive views of the river and Lake Michigan.

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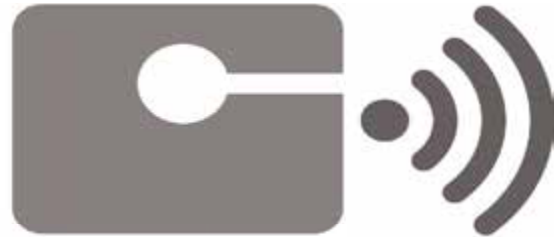
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*Condo Lifestyles* attempts to provide its readership with a wide range of information on community associations, and when appropriate, differing opinions on community association issues.

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# From the Editor

**W**ell, it seemed like it took a lifetime, but we made it to Phase 4 of Re-Opening Illinois. Hopefully we can all stay vigilant about our health and safety protocols so that we can keep our positivity rate low and have as few as possible additional lives lost from the coronavirus. Residents of associations face a greater challenge than many others because of the common areas and higher density of people in a given building. While it's important to re-open your property and make lifestyle choices in accordance with the CDC & State of Illinois Guidelines, just please don't let COVID fatigue set in and do your best to minimize any risk for yourself *and* others.

Association services, contracts, vendors and anyone involved with associations are being impacted by COVID-19. Our cover story highlights some examples of what some leading management professionals and their associations are doing to meet the various operational challenges that the virus has caused. Basically many outdoor projects are moving forward and those that were planned for the interior of the building have been slowed.

Our second story about living with COVID-19 today and planning for tomorrow offers some insight on how Phase 4 of Restore Illinois relates to various aspects of community living including the re-opening of clubhouses, common areas (lobbies, laundry rooms, showers and locker rooms, sun decks and swimming pools, etc.). This article also discusses the need to consider items in your budget for next year as a result of changes at associations related to Covid-19 such as increased cleaning regimens. Insurance and liability concerns should be examined and Boards should look at the association's policies, rules and regulations to determine what changes should be made to address contagious illnesses, not only as it affects owners, but also employees.

Other important topics covered by COVID-19 specific articles in this issue include socially distanced elections, virtual vs. in-person meetings, assessment collections, notifications and liability waivers. As contracts expire and new ones are negotiated, Boards should discuss with legal counsel what additional terms should be included in contracts to protect the association as the pandemic continues.

We've also included some articles that are not COVID-19 specific in this issue. One great story in our money matters column is about how HOAs and management companies can avoid being exploited by a business email compromise scam and other fraud. One article in our Board Basics column outlines seven ways to recruit new board members consistently and effectively while another article offers the top ten reasons why homeowners should attend board meetings.

Our Management Talks column features an article on managing communication during capital projects. Two more general articles inside this issue deal with frequently asked questions of community association life and myth busting of association truths.

It's so important that we all stay informed and follow the latest guidance and updates issued by the government and . Community association board members should stay in consultation with their professional partners, including community managers, attorneys and others on how your community can best handle matters relating to COVID-19.

We will all continue to struggle with the change and challenges that COVID-19 brings us. It will require teamwork and cooperation from all of us to fight off the virus and continue to operate associations and our lives in a safe and healthy way. If you have an idea or new message that you would like to share, please send it to me or feel free to call. We continue to be optimistic in our outlook and cautious at the same time. Hopefully our doctors and scientists and other leaders will work in unison to help us all navigate this difficult period as we move through it together. ❖

Warm Regards,  
Mike

**Michael C. Davids**  
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by Diane White - Alliance Association Bank, a division of Western Alliance Bank

# How HOAs and Management Companies Can Avoid Being Exploited by a Business Email Compromise Scam

A newer type of cybercrime called business email compromise (BEC) is on the rise – learn about fraud protection best practices used to thwart BEC and keep your business safe.

Getting called into the CEO’s office can be nerve-racking. What’s even scarier is getting an email from your CEO that’s actually coming from someone else posing as him or her. That’s what sophisticated scammers are doing at an alarming—and growing—rate in a newer type of cybercrime called business email compromise (BEC).

The FBI considers BEC, which the agency defines as a scam targeting businesses working with foreign suppliers and/or businesses regularly performing wire transfer payments, a serious threat. And they should.

In 2018 alone, BEC was responsible for \$1.2 billion in adjusted losses.

Here’s how it works. The cybercriminals compromise a business’s email system through social engineering (psychologically manipulating people to give out confidential info) or computer intrusion techniques. Once they’ve gained access to your network and email system through malware and spear-phishing (targeted) attacks, they might spend days or even months becoming familiar with your company’s billing system and vendors with the end goal of conducting an unauthorized

transfer of funds.

But here’s where they really up their game: They also learn who specifically is making the payments, and they study the CEO and CFO’s travel schedule and email style. This is so that once they’re ready to make their move, they can impersonate that person to authorize a payment.

## Protect Your Payment System

There are a variety of best practices to thwart BEC, but one of the simplest is to talk face-to-face or to pick up the phone to confirm the request. Yes, email is simpler and faster, but if there’s ever a question about a transaction, don’t rely on email alone.

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### If You've Been Compromised

First, recognize that these are sophisticated scammers, and they are having much success against a lot of companies. In fact, the Association for Financial Professionals, which has been tracking BEC for the past few years, reports:

- **Approximately 80% of companies have been impacted, up from 64% in 2015.**
- **There's been a 136% increase in identified global exposed dollar losses.**

- **BEC has been reported in all 50 states and in 150 countries.**

If your company has been a victim of BEC, act quickly. The first step is to contact the originating financial institution to request a recall or reversal as well as a Hold Harmless Letter or Letter of Indemnity. Next, contact the FBI's Internet Crime Complaint Center and file a complaint.

*continued on next page*

As with any cybercrime, raising awareness and providing employee education are essential first steps. Here are a few safeguards to share with your staff:

- **Confirm changes.** Whether it's initiating a payment, transferring funds or updating vendor information, policies that require two-factor authentication or a secondary sign-off by another employee can provide extra protection and prompt a double-check of each change request.
- **Flag the unfamiliar.** You can use email rules and intrusion detection system rules to flag emails that don't have quite the right extension or construction. For example, if your company uses `firstname.lastname@company.com`, set up a flag for `firstname-lastname@company.com` or `firstname_lastname@company.com`. You also can flag incoming emails that have a different "from" and "reply to" address.
- **Identify internal and external.** Color code virtual correspondence so e-mails from employee/internal accounts are one color and e-mails from non-employee/external accounts are another in employees' inboxes.



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AVOID E-MAIL BUSINESS COMPROMISE SCAM

# FRAUD PROTECTION CHECKLIST



## X1 Identify High-risk Users

Identify your high-risk users such as HR, executives, IT managers, accounts and financial personnel

- Review each for what is posted on social media, company websites and in the public domain, especially job duties/descriptions, hierarchal information, and out of office details
- Identify email addresses that may be searchable in the public domain

## X2 Develop Critical Policies

Develop critical policies and review with stakeholders

- Develop a wire transfer policy that documents your established processes and corresponds with the products and services we provide. Review it with all parties involved periodically.
- Institute policy concerning access to and release of financial information, IP, customer records and employee records
- Institute a security policy

## X3 Develop Response Plan

Develop a comprehensive cyber incident response plan

- Consider comprehensive cyber security insurance that covers data breaches and CEO fraud
- Understand what information you need to protect: identify the corporate "crown jewels"
- Understand how to securely store the information, who has access to it and how to protect it

## X4 Implement Technical Controls

Implement appropriate technical controls for your technology

- Email filtering
- Two-factor authentication
- Complex passwords
- Patching/updating of all IT and security systems
- Manage your network boundaries
- Manage access and permission levels
- Adopt whitelists or blacklists for external traffic
- Register as many as possible company domains that are slightly different than the actual company domain

## X5 Perform Regular Training

Perform security training regularly to keep it top of mind

- Train users on the basics of cyber and email security
- Train users on how to identify and deal with phishing attacks with new-school security awareness training
- Frequently phish your users to keep awareness up

## X6 Identify Red Flags

- Watch out for fraudulent or phishing emails bearing the following red flags such as urgency, spoofed email addresses, demands for wire transfers

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by Janelle Dixon - Kovtiz Shifrin Nesbit

# 7 Ways to Recruit New Board Members Consistently and Effectively

A townhome, condominium, and homeowner association's Board of Directors serve on the association's front lines and help ensure that the entire community moves forward. Because it is responsible for all aspects of an association's business, including, but not limited to, maintenance of the community, operations, decision-making, finance overview, and overall management, the Board must include qualified individuals.

## Proper Attention to Board Member Recruitment

A well-staffed Board of Directors is one that is equipped with a variety of skills, a wealth of experience, and a willingness to handle complex problems. These volunteers will be tasked with a wide range of duties, all of which benefit the community they serve. That is why it is important to ensure that the task of finding replacement board members is given proper attention.

When a member leaves the Board of Directors, someone new must step up. But encouraging participation can often be difficult.

Throughout my practice of representing a

variety of community associations, I have a wide range of experiences with board recruitment. Some community associations never have a problem with board recruitment, but still, there are other community associations that repeatedly run into issues that make it difficult to secure board involvement.

## Consistency is Key

What I have learned from each side of the spectrum is that consistency is key. What you do often, you will do well. Subsequently, below are seven suggestions I can offer that associations should consider when attempting to secure Board recruitment and involvement.

## 1. Promote board meetings and remind the community that they are public events

Owners often hesitate to run for the Board because they are unsure of what to expect and are unsure what their commitment will entail. Owners may also worry that they are not qualified to handle the issues that may arise. However, skeptical owners who later have an opportunity to observe the Board in action, often times become invigorated and encouraged to get involved.

## 2. Send out an informational flyer (and or e-mail)

Similar to promoting board meetings, you should also let owners know that they can run for an open position on the Board in the next set of elections. Additionally, you may consider providing an overview of the responsibilities they can expect to take on if they win.



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### 3. Identify community members to approach in person

If you don't already have a few names in mind, turn complainers into participators! As long as they respectfully voice their complaints, individuals who frequently approach the Board with suggestions for improvement can make excellent candidates because their complaints often signal that they care about what is happening in their community. They have shown their level of investment by already being observant, taking note of issues, and taking the time to speak up. So, ask them to run for the Board!

Appealing to specific talents is a good way to get people interested in volunteering. Start by considering any gaps that exist in the Board's skill set. Are you missing someone with experience in social media outreach, event planning, or finance? Then these are direct qualities that the Board can seek in a new member.

### 4. Candidates = Commitment

After the new Board member has been elected, don't forget about the other candidates! People who throw their hat in the ring are bold enough to demonstrate their interest in leadership and their willingness to commit to the community, so you should capitalize on that interest. Keep those who have run and were not elected engaged. Identify their specific platforms and consider creating a committee they can serve on to see it through.

### 5. Transparency and accountability

Be transparent about the duties, challenges, and time commitment involved in being a Board member. No one likes to find out the hard way that a position is more than they bargained for. Additionally, being transparent about the requirements up front can help save an association from the headache of having to find a replacement Board member mid-year.

### 6. Share information

Current Board members should give new members any documents created by their predecessors to help demonstrate the tasks required and how to perform them. Don't underestimate the value of a welcome packet and guide! An orientation and/or training sessions are also good ideas.

### 7. Today's preparation is tomorrow's achievement

Set up new Board members for success. If the previous member was disorganized and left a mess to clean up, the new recruit's minimal experience will leave them feeling overwhelmed. New board members can learn their new duties at a faster rate and are often more effective in their role if they don't have to start out by taking care of their predecessor's unfinished work.

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from page 5

Stage 4, some are gradually reopening or looking to reopen under new protocols to prevent crowding.

New signage promotes social distancing, and new barriers protect door personnel.

Sanitation efforts include amping up cleaning frequencies, requiring and sometimes providing gloves and face masks, and hiring additional workers to clean and sanitize the buildings and common areas.

"Something we have done is notify homeowners when we will be onsite and to not approach us to prevent contact," Purrazzo says. "We also asked homeowners to give vendors their space if they are working onsite."

Vendors and contractors, too, have been diligent about precautions to protect their employees and customers, he adds.

Maintenance teams are the property management heroes. As essential workers, they are showing up every day. Many are taking on new and expanded chores like interior inspections and cleaning.

"Maintenance personnel and vendors that provide cleaning and sanitizing services have seen a significant upswing in activity and frequency, along with revised and enhanced pro-

ocols and procedures," Puder says. "More frequent cleaning and sanitizing is required such as elevators and elevator buttons, door handles, lobbies, common areas, the door person's desk and common area corridors, to name a few."

**Interior work is on hold, but not always.**

Construction is deemed an essential business, but that doesn't mean every project is essential. Many interior projects like corridor and lobby renovations are on hold. Some construction companies are choosing to delay their jobs or shorten their hours to reduce their workers' exposure to others.

"No one is working inside any of our buildings unless it is an emergency or a health and cleanliness issue," Skewers says.

"Many boards have understandably slowed down interior construction projects," Donnell says. "They don't want people they don't know in the building, or they are concerned about the noise for residents working from home."

One of Donnell's associations is undergoing a massive riser replacement, but only in the common areas. Replacing the branch lines into individual units is still months away. Hopefully, COVID-19 won't be as much an

issue by then.

Puder reports that contractors coming into Community Specialists' client associations are required to wear face masks and observe social distancing. They also must follow new procedures for accessing the buildings and roofs, and for using the elevators. No more than two to four people are allowed in an elevator at one time, depending on the size of the elevator.

A riser project at a Community Specialists association was shut down for several weeks on the advice of attorneys and insurance companies for both the building and the contractor. During the time off, the contractor and building developed extensive protocols and procedures to assure the safety of all parties. It was an expensive hiatus. Costs mounted as the contractor demobilized and remobilized.

**Exterior work is easier to implement, maybe.**

Anyone that can work outdoor—landscapers, roofers, tree trimmers, outdoor painters, pond maintenance and pavement companies—is doing so to the best of their abilities, Skewers says.

"The majority of our projects are going ahead as planned, albeit with modified processes, but we have been aware of the



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impact on residents because they are working from home," says Donnell. "No one is happy if someone is using a grinder outside their window first thing in the morning. In those situations, we have modified some of the times, to start a little later, and spare them that interruption for as long as we can."

In June, Donnell had four capital projects in progress, including balcony painting and facade restoration.

Purrazzo has been busy too.

"We have been signing off on items in our board meetings, and projects are moving forward," he says. "Since May, I have done a whole association roadway tear-off, siding replacement, trim improvement, new gutter installations and interior hallway painting."

He is aware of delays and postponements throughout the industry, and he suspects they may cause bottlenecks during the last half of the year.

**New projects can be slow to launch.**

"Getting inspections done by professionals needing to write RFP specifications is taking longer," Skewers says. "Reserve study proposals and follow-up to current reserve study issues by management have slowed

down due to limited building access." He believes it will be back on track sooner than later now that we have entered Phase 4 of the re-opening in Illinois.

Another challenge is the reluctance of board members to get together to conduct walk-throughs, inspect properties and sign contracts, he says.

Pre-bid meetings on-site are occurring, but usually the contractors visiting are being staggered or reduced to small groups, Puder notes.

"Vendors and contractors are chomping at the bit," Donnell says. "They want to do their work with safety of their employees and the residents in mind, so they can keep their businesses going, especially when it comes to work on the exterior or anywhere outside of the building."

**No one has a crystal ball.**

Whether the changes and adaptations made so far will be permanent or not is impossible to tell. Some industry insiders yearn for the "old normal," and others worry about those that won't survive the upheaval. A few find silver linings. Regardless, everyone must ride out the storm to see what the future brings.

"Health and safety are the most important consideration not only for the unit owners, building personnel, but also all of the contractors and vendors, and we have to also maintain the building facilities to the greatest extent we can. We are following City, State and Federal requirements, and waiting on direction and permission from them for certain things," Puder says.

"I have a concern for the small contractors and vendors such as janitorial services, interior decorating companies and small handyman operations, and their ability to weather this business climate," Skewers says. "Hopefully, they can redirect their businesses in other directions."

"I have noticed things are moving a little slower than before, but to be honest, I think it is for the better," Purrazzo says. "We can make sure things are done correctly. That way we won't have to revisit them later. Life has become so go-go-go lately. Prior to the pandemic, everything had to be instant gratification and instant response. I think with all that is happening, it is giving us time to be patient and to have a better understanding of those around us." ■■



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by Nicholas P. Bartzan, Esq. – Altus Legal, LLC

# IS THAT LEGAL? // FAQs OF COMMUNITY ASSOCIATION LIFE

This past winter, myself and two industry colleagues, Lea Marcou of Associa Chicagoland and Robert Prince of Cervantes, Chatt & Prince, P.C., presented an educational session at the CAI 2020 Expo. The presentation was, of course, a long, long time ago – February 2020 – before COVID-19 when large gatherings were still a routine part of life.

**W**hile COVID-19 continues to be a major factor in community association living and management, I thought it might be nice to relay non-COVID scenarios and FAQs that may force board members and community managers to pause, stroke their beards (or any beard, if one is nearby and readily available), and consider if the action they're about to take is (or is not) legal. Thank you again to my co-presenters, Lea Marcou and Robert Prince, for providing their insight and contributions for this article.

Below are some snippets from a few of the topics we covered during our session, including:

1. **Charging owners for document and record requests – What can we chargeback?**
2. **22.1 Disclosures – How much can the association charge for these?**
3. **Wellness Checks – Is the board/manager obligated to perform "wellness checks" on individuals?**

## Let's dive right in.

1. **Charging owners for document and record requests – What can we chargeback?**

The answer depends on whether the community is governed by the Illinois Condominium Property Act ("ILCPA") or the Common Interest Community Association Act ("CICAA"). The association should also look to the governing documents (declaration, bylaws, etc.).

Condominium associations may charge the requesting unit owner the "actual cost to the association of retrieving and making requested records available." So what does "actual cost" mean? Well, certainly, if the records are stored via hard copy, and if someone has to retrieve those records, that time can be charged. But what if it takes the community manager 2-3 hours to then compile the documents

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(including electronically)? Can the association chargeback the community manager's time?

The answer depends on the association's policies and the management contract. If compiling such records is outside the scope of the manager's services per the management agreement and billed as an "extra" to the association, that is an "actual cost" to the association under the ILCPA. An association can take the position that those charges should be charged back to the requesting unit owner. We recommend, as best practice, (i) codifying the practice of chargebacks to unit owners as an association policy or rule that can be provided to unit owners, and (ii) informing the unit owner before collecting the records what the estimated charge will be in order to comply with the requests.

If the CICAA governs the association, the rules are a bit more relaxed. Section 1-30(i)(3) of CICAA states that "a reasonable fee may be charged by the board for the cost of retrieving and copying records." Thus, the CICAA does not limit charges to "actual" as does the ILCPA. The fees can be set by the



board, but must remain "reasonable." Even still, we recommend, as best practice, (i) codifying the practice of chargebacks to owners as a policy or rule that sets the hourly charge for collecting the records, and (ii) informing the owner before collecting the records what the estimated charges will be.

## 2. 22.1 issues – How much can a condominium association charge for these?

Recall that a "22.1" is condo jargon for a disclosure form that condominium associations are obligated to provide (under Section 22.1 of the ILCPA) to unit owners answering nine (9) key questions about the association. These disclosures are typically passed along from the requesting unit owner to a prospective buyer hoping to learn more about the association before purchasing a unit.

Section 22.1 of the ILCPA establishes that the association may charge a "reasonable fee covering the direct out-of-pocket cost of providing such information and copying." The question becomes – what is a "reasonable" fee? How much can the association charge?

It's become quite typical for management companies to outsource the provision of the 22.1 forms to a third-party provider. The provider bundles the documents and charges a fee for the service. The fees can range from \$50 to \$500, depending on the association and range of records requested. Recently, the U.S. Court of Appeals took



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up the issue of charges for 22.1 and other unit closing documents (Horist v. Sudler & Co.) and issued a ruling that did little to clarify the issue; however, it also did not preclude a condominium association from charging a “reasonable” fee as determined by the board.

The takeaway, then, is that the fees charged must be what a court would deem “reasonable.” If so, the association can legally charge the fee that the board determines. Remember, what a court considers “reasonable” for a Streeterville high-rise association is not necessarily reasonable for a suburban 3-flat association. The board should decide with the help of its hired professionals.

**3. Wellness Checks - Is the board/manager obligated to perform “wellness checks” on individuals?**

As the “silver wave” causes more seniors to age-in-place within community associations, managers and boards wrestle with their responsibilities to these individuals. A common question we see from community managers relates to receiving phone calls or emails from an owner’s out-of-state relative, describing that the owner has been unresponsive to phone calls and is thus asking the

manager to perform a “wellness check.” Is the board or manager obligated to perform the “wellness check” to see if the individual is ok? Can the manager use a key to enter the unit if no one answers the door?

Wellness checks are one of those situations where the board must balance basic human, neighborly responsibilities (which should include watching out for more vulnerable neighbors) with limitations of what the association is meant to do, legally-speaking. Most associations are not designated as assisted-living facilities. It is neither staffed with trained professionals for eldercare nor is it insured for such services. A standard community association board is legally tasked with operating and maintaining the common elements of the association - that’s about it.

Concerning whether the manager or board member should perform the wellness check, our answer depends on the circumstances. There is no harm in sending someone to knock on a door to see if the individual answers, and generally no problem with responding to the inquiring relative about whether or not the individual answered the door. Concerning entering uninvited, we do not recommend doing so. Even if the association has a key

for emergencies, entering uninvited is a task best left to the police or fire department.

This same advice applies in the case of COVID-19. Granted, we do not recommend any association member or employee put him or herself in danger of COVID-19 exposure. But remember that community association members are not only co-owners in a not-for-profit corporation, but also neighbors. Neighborly behavior, while not legislated, should be a given in community association settings.

I think of a Fred Rogers’ (aka Mr. Rogers) quote that sums up the role of neighbors during these difficult times - “When I was a boy and I would see scary things in the news, my mother would say to me, ‘Look for the helpers. You will always find people who are helping.’”

In conclusion, when it comes to the “grey areas” of community operation and management, a board is best served by relying on its hired professionals for guidance. Doing so not only ensures that best practices are followed, but also that the board can more safely rely on its insurance coverage in the case of a lawsuit - a board member’s protection under the “business judgment rule” depends on doing so. ■

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by Angela Duea – FirstService Residential

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# MANAGING COMMUNICATION & CAPITAL PROJECTS

Summertime – the season of lazy days, warm nights, fun in the sun -- and the sounds of capital projects buzzing with activity! For many associations, summer is the busiest season of the year as capital improvements get underway, and the board of directors and community managers work to keep the projects on track. There are many factors that go into making sure a project completes on time and within budget. Follow these suggestions to manage it well.

**MANAGE EXPECTATIONS**

Your project should commence with a well-defined scope, of course, and clear deliverables and milestones. These job requirements are the framework that allows the manager and board to know what to expect and when to expect it.

In large-scale projects, the vendors, board and managers might hold a project meeting where residents can learn the details, process and any steps they need to take. This is the opportunity for the project team to become

familiar with the terminology and process - knowledge that will guide the team's future decisions. The team should ask plenty of questions.

It is also important to set expectations for how the contractor will communicate during the project. "In a project that's managed well, a foreman, superintendent or spokesperson will set up a schedule for project updates, such as every Friday afternoon, as well as check-in times around critical milestones," says Bob Meyer, Director of Project Management for

FirstService Residential. "This helps the board members stay on top of the work, and it also helps them to have up-to-date answers if questioned by a resident." For property managers, who need to keep track of all the moving pieces, these status updates help them plan their own work better.

"If the manager must inform residents that they will have to take action, such as moving their cars or avoiding a certain entrance, identify in advance when they will be at that stage," says Meyer. The status updates also give advance warning if the tasks or timeline are slipping. Finally, the project team should determine when the board will be involved in decision-making, and what types of issues the manager is authorized to decide alone.

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## DETERMINE TIME COMMITMENTS

“Be realistic about the amount of time the property manager and board members will have to oversee the project,” Meyer says. “In addition to their role in managing the property, the manager is also thrust into the role of Project Manager, Project Superintendent, Project Communication Liaison, Trouble Shooter, and the Head of the Project Complaint Department.” Without the proper experience or unless allowed the proper time to

supervise, these projects usually start to take their toll on the manager because they can’t be everywhere and do everything. The contractor can take over the project on a “self-perform” basis, but this could lead to cost overruns and missed deadlines.

If the community manager and board determine that they cannot put the resources into project management, an expert can be hired to manage it for them. Not only does this relieve the workload for the association man-

ager, but it also brings the benefit of a specialist who has a background in the work. FirstService Residential’s Project Management division takes the lead on many high-profile and complex projects in this way to ensure the best possible outcome.

## DEVELOP A TRUSTING RELATIONSHIP

The board, community association manager and vendor must establish mutual trust so they can work effectively. If the association has worked with the vendor before, chances are they have built a productive relationship with each other. During the project, the project lead must have an open door for questions or feedback, and the same goes for the manager and board. However, plan a route for communications. An engineer can’t work effectively when members of the board are emailing and calling, and residents are stopping workers to make comments.

While vendors are responsible for keeping open channels for the association’s communication, the team should respect the contractors as experts. Assuming the project team did its due diligence in selecting the right company, the decisions and processes of this company should be upheld. The project will be delayed if the team second-guesses the professionals.

## PERFORM A POST-MORTEM

After the project is completed, the debris is swept away and the equipment returned to home base, it is time to review the project. Many project teams skip this step, but there are valuable lessons learned and post-project activity to complete.

You will want to analyze the vendor’s performance, of course, and give them final feedback on the endeavor. If your company has a system to share reviews about vendors internally, it is important to record your evaluation. Honest feedback from residents should be accepted. And if requirements shifted during the project, or new requirements necessitate a phase 2 of the project, their perspectives will help make the next phase run more smoothly. Finally, make sure all project documentation is properly preserved for the future.

Now that you’re committed to vendor relationships, and to building an atmosphere of trust, you’re ready to work with your vendor partners for maximum success. These steps will optimize your efforts on association projects and improve the property values of the community. ■

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