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HOT TOPICS, TRENDS & ISSUES for COMMUNITY ASSOCIATIONS

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TOGETHER
WE WILL GET THROUGH THIS!

by **Pamela Dittmer McKuen**

Hot Topics, Trends and Issues for Community Associations

STATE of the INDUSTRY REPORT • 2020

HOT TOPICS, TRENDS & ISSUES FOR COMMUNITY ASSOCIATIONS

For 24 years, the annual Condo Lifestyles State-of-the-Industry has brought together hundreds of association professionals, homeowners and volunteers for an enlightening program of education, networking and camaraderie. The event is the signature production of MCD Media, publisher of Condo Lifestyles and Chicagoland Buildings & Environments and websites.

This year, as we all know, has been extraordinarily different. The deadly, fast-spreading coronavirus, known as COVID-19, has shut down much of the world and nearly all in-person gatherings in efforts to keep people safe.

Despite the virus, the needs and obligations of community associations are essential and ongoing. Managers, contractors, lawyers, accountants, maintenance workers and others have adapted to our new reality. They are continuing their work with new safety precautions and methodologies. As with any non-pandemic year, a myriad of hot topics, trends and issues continue to emerge.

For the obvious and necessary reasons of social distancing, MCD Media's traditional State-of-the-Industry program did not convene at the Chicago Cultural Center as planned. But we did adapt, just as you have adapted since the coronavirus uprooted our personal, private and professional lives.

Every year Michael C. Davids, president and founder of MCD Media, formally opens the event with his heartwarming welcome. Today we hand him the virtual microphone:

"We regret that we could not hold our annual luncheon seminar scheduled for December 10, 2020, in person, so in an effort to simulate the event, we have produced a digital version (PDF) that included articles that replicate our most popular agenda items and summarize the key content: the Legal and Legislative Update, and the Community Association Industry Hot Topics, Trends & Challenges panel discussion. The legal update and some current legal questions are covered in an article titled 'Lessons Learned from 2020 as We Plan for 2021' and the hot topics panel discussion is part of this article. In addition to a legislative and case law update, we also recognized and expressed our appreciation to our Advisory Board, committee

members and sponsors.

COVID-19 has impacted us all in many and varied ways that most of us never thought possible. The community association industry has been impacted more than most as residents typically live in close proximity to each other and share common entrances and facilities. For the most part, companies that serve this market have done an excellent job of adapting and meeting the challenges created by the pandemic. Although we are all growing tired of having to deal with COVID-19, it is important nonetheless for us to report on what has happened to date, and share ideas as to how we can continue to meet its many challenges. We hope you find this information useful and we'd be glad to receive any feedback or input you may have.

My wish for the coming year is that we all do our absolute best to stay safe, healthy and consider the health of others in all that we do until modern medicine can help bring us relief from the grips of COVID-19."

PANEL DISCUSSION:

HOT TOPICS, TRENDS & CHALLENGES

Taking new form this year is the "Hot Topics, Trends and Challenges" panel discussion during which leading professionals offer their insights and views on the most pertinent issues facing practitioners, board members and associations. This year's panelists responded to questions via email and telephone interviews.

The 2020 panelists are: David Barnhart, vice president of condominium management, The Habitat Company, Chicago; Michael Bonick, principal, Kellermeyer Godfryt Hart architects and engineers, DesPlaines; Brian Butler, senior vice president, FirstService Residential, Chicago; William DeMille, president, Chicagoland Community Management, Chicago; Adam Sanders, project engineer and team leader, Elara Engineering, Hillside; Peter Santangelo, president, Wintrust Community Advantage, Barrington; Thomas Skweres, vice president, ACM Community Management, a Division of RealManage, Downers Grove; and Jason Wilen and Mike Naponelli, both senior associates at Klein & Hoffman architectural and structural engineering, Chicago.

In brief summary, the panelists reported exterior capital projects mostly carried on despite COVID-19, although adjustments were made. Most interior projects are on hold or proceeding slowly due to concerns about potential viral transmissions. Associations report greater expenditures for cleaning and sanitation measures, but, happily, no widespread financial losses or assessment deficiencies. All recognize the need to carefully monitor pandemic conditions and are hopeful that we will see positive results from vaccines and therapies.

An edited version of our panelists' responses follows:

Q: What types of capital projects did you see being done in 2020?

ADAM SANDERS: In the condominium market, we are seeing viral transmission measures being pursued for exercise rooms, lobbies and other common areas. Additionally, building control modifications and upgrades are being implemented to enhance ventilation and reduce the likelihood of the transmission of airborne viruses.

Also, due to elevated lake levels, several buildings are experiencing water seepage and are pursuing dewatering projects. Plumbing riser studies, plumbing riser implementations and equipment replacement projects (i.e. boilers, chillers, AHUs, etc.) continue to remain a driving force in the industry.

PETER SANTANGELO: Associations have been still moving forward with capital improvement repairs and replacement projects even during the pandemic. Projects we noticed were prevalent this year were facades, risers and roofs. Associations this year more than ever were incorporating the loan repayment into the regular assessments; however, we did see quite a few special assessments implemented for loan repayment.

WILLIAM DEMILLE: I've got buildings that have plumbing projects going on and buildings doing significant exterior maintenance. One building is embarking on a riser project. It's moving along. The building bought half a dozen hospital-grade UV machines to disinfect units if the residents want it. Another property in the suburbs where they have a rewiring project that requires going into the units and walls, that project is pretty much on hold because too many people don't want anyone in their units.

Q: How did COVID-19 affect capital projects this year? Are certain types of projects done or not done because of the virus?

JASON WILEN AND MIKE NAPONELLI: While some projects were delayed in getting started and not all planned work went forward, Klein & Hoffman has been fortunate to move ahead with most of the types of repair/forensic and structural work we normally do. In some cases, clients decided to take on additional work where normally fully occupied buildings were empty or sparsely populated.

For projects in Chicago, there was some worry early in the COVID-19 crisis that construction projects would be shut down or that building permits would be hard to obtain. Thankfully, this did not occur. In our experience and from what we have heard from contractors, the Chicago Building Department has done an excellent job under difficult circumstances to allow for construction work to proceed with little or no disruptions.

DAVID BARNHART: With the onset of COVID-19 this year, projects were very much delayed. The immediate focus became keeping employees and residents safe. Increased cleaning and sterilization became the normal day-to-day activities. Those projects that were not put on hold were isolated to areas where human to human contact could be minimized. Façade work progressed, garage repair and improvement projects moved forward. Projects such as plumbing riser replacements were delayed. Any projects that were intrusive into now full-time occupied units were put on hold. These projects remain on hold particularly with COVID surging.

MICHAEL BONICK: The onset of the virus and the stay-at-home order in March couldn't have come at a worse time for associations considering capital projects in 2020. Many projects were already well underway or about to begin as the weather started to improve, leaving many boards faced with some difficult questions. Do we keep moving forward? How long will the shutdown last? How will this affect our assessments long-term? For those that were ready to begin their façade restoration projects, we saw board reactions across the whole spectrum. A great number of them decided to push their projects to 2021, not necessarily with concern for cash flow, but disruption to a building full of residents already on-edge with the pandemic, and now working and schooling from home. Many other boards decided to plow through and get the work done while the money was in place, or they were forced to keep going to address leaks or safety issues.

BRIAN BUTLER: We saw relatively little disruption for building exterior projects (façade maintenance, landscaping, roof and garage repairs), whereas building interior projects were reviewed to provide protective protocols related to COVID-19. Careful scheduling with residents, universal mask-wearing, and updated sanitation schedules were implemented at many associations that were undergoing interior projects. These projects included: riser replacements, hallway carpeting and remodeling projects, window replacement projects, and elevator modernizations.

DEMILLE: It depends on the project. If you have a major plumbing problem where people aren't getting enough water or hot water, they are a little more amenable to letting a contractor into the unit to do

that project. It runs the gamut of residents who are afraid and residents who are not afraid. I have residents who will not come outside their units, but that's not the norm. I think the average person is doing the best they can do to get on with their life and do what they need to get done.

Q: What types of special adjustments were made for Covid-19 on projects you were involved with this year?

BONICK: Façade and roof contractors were generally very accommodating of associations' needs, working shorter hours, off-hours or limiting noisy work to certain hours of the day—whatever it took. And in most cases, this worked out fine. But we also saw our share of irate residents. Let's just say they were 'expressing themselves' on a daily basis, and some of them to a borderline criminal extent. It's been tough on everyone, for sure.

SANDERS: As everyone is aware, remote online meetings have been heavily relied upon for coordination. Contractors are taking measures to maintain safe work environments including wearing masks, social distancing, temperature checks, regular cleaning of spaces, etc. Additionally, while it has always been our practice to include increased levels of filtration for good indoor air quality on all of our projects, there is increased attention and opportunity to build-in filtration and control enhancements specifically targeted at reducing the likelihood of airborne virus transmission within buildings (i.e. MERV13 filters, UV filtration, bipolar ionization, increased ventilation, building flushes, etc.) where projects are already ongoing (i.e. AHU replacements). Equipment manufacturers have also published extended lead times on specific equipment due to COVID-19 related manufacturing delays. As a result, equipment lead times are an even more significant factor in design selections that we evaluate upfront wherever possible.

WILEN AND NAPONELLI: Given the large shift from working in an office setting to working from home, a lot of collaboration occurred between Klein & Hoffman project managers and condominium associations and apartment owners to provide options for reducing the noise and vibration burden associated with various repair types. In a few instances where substantial repairs were planned for residential buildings, projects were delayed until 2021; however, we found that most projects moved forward and were successful.

SANTANGELO: We have not made any adjustments for projects that are being financed, and associations seem to be moving forward with needed repairs.

Q: What is your forecast for capital improvement projects in 2021? Are some properties holding back on projects because of COVID-19 or possible delinquent assessments or other financial issues?

DEMILLE: I think projects for residential properties in 2021 will be pretty much like 2020. It will be a property-by-property and project-by-project basis. If it's not better in terms of projects, at least more people are learning how to deal with this.

BARNHART: Try and get back on track with 2020 projects that have been delayed and to prepare for scheduled 2021 projects. We are waiting for widespread COVID vaccination to be implemented before unit-intrusive projects are restarted.

SANTANGELO: We anticipate moving forward as normal and continue to ask our clients if they see any deterioration in their delinquencies.

BONICK: Now as we approach the winter amidst the worsening pandemic, I see associations again worried about next spring and whether or not those deferred projects should move forward. I think most residents have grown accustomed to working from home at this point, so noisy work is less of an issue. And while I haven't heard of any buildings fearing imminent assessment collection issues, the longer the pandemic lasts the more those fears will grow. But I'm optimistic that we will survive another winter,

the virus and an uncertain economy, and come spring we'll at least be able to see the light at the end of the tunnel. 2020 is almost over!

SANDERS: Projects for viral transmissions are being pursued while most equipment replacement projects continue to progress. Typical equipment replacement projects are centered in mechanical rooms and result in a natural separation of workers from building occupants. Additionally, equipment and MEP infrastructure replacements due to failure and age are essential to the continued operation of buildings, especially multifamily buildings that serve as the primary residence for many of the building occupants. Thus, they often cannot be avoided and are best planned for in advance to ensure the right project is pursued at a competitive cost.

We have not had any condominium clients hold back on projects for those specific reasons to date. Other segments of the construction industry have seen a slowdown. As a result, the bidding environment is favorable to clients as contractors are looking for work. We anticipate the bidding environment to continue to be favorable for the near future with consideration to the current economic climate.

BUTLER: We are in the height of budget season right now for the vast majority of our clients who operate fiscally on the calendar year. We are seeing relative adherence to the capital planning outlined in the reserve study for each association. We have counseled our clients to maintain a focus on both short- and long-term goals through the budgeting plans. Also, necessary capital maintenance should continue to be planned as we move forward into 2021 to avoid costlier repair projects in the future for deferred maintenance.

SKWERES: I see boards looking closely at all contracts, including management contracts, to make sure that they are getting all the services specified in them. I believe vendors and contractors will see tougher negotiations ahead because of this.

WILEN AND NAPONELLI: As structural and architectural engineers, Klein and Hoffman is often asked by our clients to assist with budgetary planning by providing building assessments and cost estimates for potential structural, façade, roofing and waterproofing work. Requests for such assistance have continued to come in indicating that most of our clients are planning for such work in 2021. We have also noticed that many of our clients have adjusted to the realities of COVID-19 and have invested in efforts to keep building occupants, visitors, and vendors safe inside their buildings and properties. Most contractors and design professionals have also adjusted work practices based on COVID-19-related guidance from local, state and federal authorities. Lastly, we have been asked by some clients to assist with prioritizing future restoration work so that they will have the information they need to be flexible should financial realities require important work to occur sequentially.

Q: What types of financial issues, such as delinquent assessments, are associations facing because of COVID-19?

DEMILLE: Whether or not associations are raising assessments depends on need. If a project can be put off for a year or two, they might be doing that. I think the overall average association is going to have a minor increase, more close to the cost of living than anything else. I don't see anyone in our portfolio that is really being financially stressed at this point, but who knows what happens tomorrow? I think that everybody in this industry from our management personnel and assistant management and maintenance personnel has been lucky to be classified as essential workers and have still been able to work. I feel very bad for people who either own their businesses or work in restaurants that are not going to reopen. I haven't seen that translate to financial stress in our properties but it could. It's something we are watching for. I think associations as a whole have been good about working with owners who come to them and say, 'I'm having financial difficulties because I lost my job to COVID-19. I'm not trying to not pay you, but I need some accommodation.' Down the road there might be a ripple effect because associations have to foreclose and banks will have properties on their hands, but we're not there.

BARNHART: None in particular. We've seen more expenditures on cleaning supplies and plexiglass shielding for employees. The urban lakefront condominium associations are faring pretty well in terms of delinquent assessment collection. Collections have not impaired the ability to move forward with capital projects.

SANTANGELO: At this point in time, we have not seen any adjustments made for projects or a significant increase in delinquent assessments. We have discussed with all our clients if they are seeing delinquency issues during this time, and most have said collections have not dramatically increased.

SKWERES: We do not see a lot of people paying their assessments late at this point. Some boards, though, are becoming stricter with following their delinquency policies. I don't see boards putting off the planning of major capital projects, although I think they will approach them more cautiously. Exterior projects will probably move ahead, but there will be a lot more to consider on indoor projects. I think there will be more analysis of money requirements, and management will be pushed to take a more aggressive role with borrowing options and obtaining quality vendors at competitive prices. Boards tried to keep assessment or increases low for 2021, again due to the uncertain economic and political climate.

As a company, we have had some boards request funds or relief on the cost of property inspections that they contracted for, since many inspections were not done on building interiors for a few months. For boards that have complained we doubled up on inspections or credited fees back to our clients.

BUTLER: Boards have a fiduciary duty to the communities they represent and we are counseling our boards to maintain a careful focus on several key factors including resident safety, the nature of the project and its immediate need, financial planning and resources, as well as delinquency rates. We began monitoring the relative financial health of our associations earlier last spring, specifically related to the economic impact of the COVID-19 pandemic. At this time, we have not yet seen systemic negative impact on associations as a whole related to higher delinquency rates; however, we recognize that the longer this pandemic continues that higher delinquencies may become more acute.

We have also seen higher interest by board members to review current debt they may be carrying to refinance into more favorable repayment plans or to utilize financing to address building capital repairs due to one of the most favorable interest rate environments in decades. Our FirstService Financial team has saved tens of thousands of dollars for individual associations just by refinancing existing debt for our customer base alone.

We have seen several areas of rising costs for associations in light of the economic situation in 2020. Predominantly, we have seen a hardening of the insurance market which has led to a trend of higher premiums for common coverages from several carriers and potentially impacted deductible levels. We recommended that boards consider these expenses, along with allocating additional funds for sanitation supplies and PPE for staff. While many of the costs in 2020 have been unexpected due to the fast-moving nature of the pandemic, we have more data now to plan for another year in which it will continue to affect our daily lives.

Q: How have social distancing and virtual meetings impacted your relationships with client associations?

SKWERES: Zoom or videoconference meetings are effective, and I think will be a norm for the future. The meetings and presentations that I have attended and done seem to run smoothly and better. Everyone seems to be respectful of time and wanting to get back to whatever is going on around them at home. Since homeowners do have the ability to participate in these meetings—at the board's discretion, they do not lose out on giving their input.

BARNHART: Zoom meetings have been a huge help in managing associations and in conducting board and committee meetings. The same amount of manpower and time needed to prepare and participate in meetings is still there. I have not seen any requests to discount management fees or salaries during the epidemic.

BUTLER: Management does not consist of one monthly board meeting but rather continues 24/7 and 365 days a year. The year 2020 has led to a number of process and governance changes. As a company, we worked with our boards to adjust to virtual meetings and the true limits of in-person discussions in light of social distancing requirements. When we can't get together physically due to these restrictions, we have counseled our boards to improve and expand on other communication channels to maintain engagement with the communities. Newsletters, regular email updates, virtual social events and others have helped keep communities bound together during these challenging times.

Q: What additional "hot topics" are associations and managers looking at these days?

WILEN AND NAPONELLI: For community associations, as with all building owners in the City of Chicago, a long-planned update to the Chicago Building Code became mandatory for construction projects. New energy-related provisions came on line in January, and new building and restoration provisions became effective on August 1. As such changes apply when a permit is issued, much of the work we did this year fell under the old code as permits for restoration work were obtained before August 1. For 2021 projects in Chicago, work will have to comply with the new code. In our experience, it takes a while for clients and design professionals to become familiar with a new code. At Klein and Hoffman, we have staff that participated on City of Chicago code committees and have analyzed the new code to determine where requirements have become more stringent. Some of the biggest changes in stringency affect roofing projects. Klein and Hoffman has developed a number of presentations to bring building owners, contractors, and our staff and partners up-to-speed with the new requirements.

BARNHART: With everybody cooped up at home, rules violations are on the uptick. We've had violations of children riding their bicycles in common areas. Now if there is a noisy neighbor, you've got a dispute during the business day we wouldn't normally see. We have face mask violations. People are all COVID-19 weary, so not everyone is on their best behavior.

DEMILLE: It will be interesting to see what new products and new expenses will come out of COVID-19. We've already seen a shift in cleaning supplies, which initially were priced through the roof if you could even find them. A lot of companies have stepped up to the plate and are making cleaning products. We have to make sure they are effective and approved, not just something someone pours in a bottle and slaps a label on. One association wanted patio heaters for their outdoor space. Those are hard to come by.

SKWERES: Qualified managers have been hard to find for a long time. New people are not entering the industry fast enough to keep up with the demand. People who are currently working in the industry are hesitant to make the switch to another company because sometimes the devil you know is better than the devil you don't know. This will probably also get harder as older managers retire.

BARNHART: Finding qualified managers is a challenge that never ends. I'm searching for some right now. There is no training program through colleges and universities, so people don't even know we are a substantial industry. No one goes to school to major in property management. They all fall in in some general way. We have kind of a defined pool of candidates we are all trying to pick from.

SKWERES: I am receiving a lot of calls from currently self-managed associations as boards are finding out how much work is involved in keeping their community thriving as it ages. We've picked up a few, but it's not economical for us to take on the smallest associations. We refer them to a real estate agency that might be interested in helping them out.

DEMILLE: Hopefully, when the election issues are over, people will not be so at odds with each other. I think the best thing we can do is work to communicate well and to unite our homeowners and bring a sense of neighborhood back to our properties.

BARNHART: If we can get the vaccines out to even more people and start to get everything back to normal, that's what we're all hoping for. ✠

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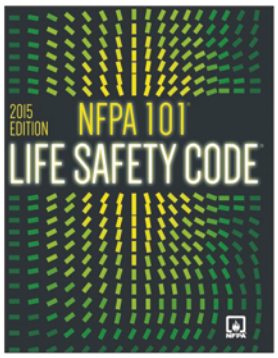

Illinois state law, 225ILCS 317/15 (h), requires a copy of all fire sprinkler system inspection reports to be submitted to local fire officials having jurisdiction. Any company must be licensed by the State Fire Marshal and anyone testing a fire sprinkler system, standpipe or fire pump must be a NICET II trained individual or trained through a Dept of Labor Apprentice Program.

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THE LESSONS OF 2020 AS WE PLAN FOR 2021

For most of 2020, we navigated through unchartered waters. Accordingly, few issues or questions were addressed by the Illinois Condominium Property Act, Illinois Common Interest Community Association Act, and/or Illinois case law. Instead, we had to rely on our experience over the years and the plain language of the law that does exist to advise our clients. Now with approximately ten (10) months of "COVID-19 experience" under our belt, it is time to make new plans, continue to adapt to current conditions and be ready for what 2021 brings us.

Should we Adopt Specific Rules for Adherence to Health Guidelines?

Guidelines have been issued by federal agencies, the State of Illinois, and the counties and cities within the State of Illinois. All have said people should wear masks when they cannot socially distance. Many Board of Directors have asked time and time again if they should take the necessary steps to adopt rules and regulations requiring owners, occupants, and guests to wear masks, while in the common areas of the association. While most of the community associations we represent did not initially adopt rules requiring adherence to applicable State and City guidelines, we are seeing that more are reconsidering this position since it appears the guidelines will remain in effect for most of 2021. A Board of Directors can adopt rules requiring adherence to applicable State and City requested guidelines, as well as any additional reasonable restrictions or requirements the Board wishes to impose. The Board can adopt rules which are stricter than the State and City guidelines.

Even without the adoption of specific rules requiring the adherence to applicable guidelines, the Board may rely on the provisions within the association's community instruments which prohibit noxious and offensive/nuisance-type conduct. After all, not wearing a mask within the common areas can be interpreted to be noxious and offensive conduct as it unquestionably addresses health and safety. Thus, the issuance of a violation notice and levying a fine is warranted.

Whether a community association should adopt such rules is dependent on the community. Rules may not need to be adopted if the community has been responsive to the reminders posted throughout the association by the Board of Directors. Yet, rules may be needed where a significant amount of the residents fall within a high-risk category. Regardless, if the Board adopts a specific rule or relies on the noxious provisions existing within its community instruments, a Board of Directors can only enforce the restrictions if an Owner issues a complaint. If Owners are not willing to issue these complaints, specific rules on the topic may give Owners a false sense of security. It is impor-

tant for a Board that seeks to enforce guidelines to continue to remind their Owners that they cannot do this alone and need the Owners to help be the eyes and ears of the community.

Issue a Fine or Deny a Rule Violator the Use of Common Elements?

While fines are the most common consequence to a rule violation, due to the seriousness of not adhering to guidelines, a more aggressive approach may be to deny a unit owner use of the common elements. Certainly, the Board cannot deny one the right to ingress and egress to their Unit or the Building, but a common question is whether they can deny the violating Owner use of the fitness room, clubhouse, social and meeting rooms, etc. This is not a settled issue. We do agree that this consequence could be subject to a legal challenge. However, a Judge may also look more favorably upon denying an Owner access than the Board imposing steep fines. After all, a fine is not going to stop the spread of the virus, and the Owner had the choice to follow the guidelines and use the common elements or not and be denied access.

Follow Safety Protocols for Amenities That Are Open

In 2020, we all saw many community associations keep common amenities closed. However, this may not be practical for 2021. It is important for community associations to ensure that proper safety protocols are followed when reopening amenities and/or to keep the amenities opened. The protocols to be followed have been well-publicized and are as follows:

- Decrease maximum capacity (and comply with any limitations set by your municipality);
- Require reservations (to reduce large gatherings and to assist with contact tracing);
- Limit access to residents only (no guests);
- Increase cleaning and sanitation protocols in accordance with applicable CDC and IDPH guidance;
- Re-arrange space to promote proper social distancing (separating exercise equipment and/or furniture, as applicable);
- Adopt rules regarding use of the amenity spaces, such as a mask/face-covering requirement during use of amenity;
- Adhere to all applicable CDC, state, and local guidelines regarding indoor amenities;
- Temporarily close amenities in the event of an outbreak, and only reopen after proper and thorough sanitation protocols are completed in accordance with CDC guidelines;
- Send reminders to all residents of the protocols, policies, and rules, as necessary;
- Update waivers signed by the residents to specifically refer to COVID-19; and,
- Reduce hours of operation (which will also allow for additional cleanings).

Like the adoption of rules, whether an amenity is opened, or remains opened, during the pandemic is a decision for the Board of Directors to make. To make this decision, the Board can consider the financial impact on the community, whether the area is commonly used by the members, whether the residents are cooperating, and it may consider composition of the community. It is a good practice, when moving to reopen the amenities for the Board, to make the opening conditional upon compliance with the protocols remaining feasible.

Virtual Meeting Trend To Continue

A small, silver lining of the COVID-19 pandemic is that it has forced community associations to re-evaluate their practices for meetings. Many associations are having success with conducting meetings virtually via platforms such as Skype or Zoom. This appears to be a trend that will continue into 2021. Virtual meetings allow more members to attend the Board meetings. They have also led to more efficient meetings, with less interruptions. Like a fine wine, conducting virtual meetings will get better with age, as people get used to it.

What are some tricks to ensure that a virtual board meeting is a success? First, the Association should select a forum that will work best for its community. Second, just like an in-person meeting, an agenda must be created and followed. Third, the host of the meeting must be familiar with the features of the platform being used, i.e. know how to "mute all" to avoid interference, others speaking over one another, and background noises. Fourth, a process must be adopted to ensure that only Owners are admitted to the virtual meeting. Finally, Owners should be required to submit written questions in advance of the meeting.

Electronic & Absentee Voting for Annual Meeting

These same tips should be followed during an annual meeting. In addition, if it was not done in 2020, now is a good time for Boards to review the association's rules on how to conduct an annual meeting and to consider adopting absentee ballot or voting by acceptable electronic means. For condominium associations, these rules must be adopted at least 120 days before the annual meeting. The adoption of such rules will also ensure that both the members of the Board and the Owners understand how the meeting will proceed.

Handling Positive Cases of Covid-19 Within Communities

In 2021, we will continue to learn of positive COVID-19 cases within our communities. It is important for a Board of Directors to understand what it can and should do when it becomes aware of a positive case. Often, when the Board learns of a case, it is conflicted between privacy concerns and ensuring the safety of those within the community. Adopting a policy, as to the protocol to be followed when a case is known, will help to assure a resident that they will not be ostracized or targeted, while also ensuring all are safe.

If the person to test positive is a resident, the Association should send correspondence to the resident directing him/her to (a) adhere to all applicable CDC guidelines including self-quarantining; (b) remain in his/her Unit except as necessary to receive medical treatment and coordinate with management on when he/she will need to enter/exit so that the hallways can be cleared to avoid exposing other residents; and (c) coordinate with management on trash removal, package pickup, etc. to ensure no risk of exposure. If applicable, the resident should be encouraged to participate in relevant contact-tracing programs. The Board should also send correspondence to all residents and unit owners advising of the positive test and to explain the additional steps taken by the association to protect the health, safety, and welfare of residents. The name or any identifying information about the resident who tested positive must not be shared.

If the person who testified positive is a staff member, the same notice should be sent to the residents. It is important that the Association understands its obligations to the staff member or

employee regarding paid time off and when the person may return to work. Similarly, the Association must know what to do if other staff members may have been in close contact with this employee. It is recommended that the Board consult with legal counsel and, if applicable, the Union representative, if an employee tests positive.

Plan to Be Proactive in 2021

It is still unknown as to exactly what 2021 holds. We all believe it will be a transition from the reactiveness of 2020 to becoming proactive, as we learn to live with COVID-19. We believe that we will see community associations adopting rules and regulations and protocols in an effort to maintain a safe environment. We also believe we will see community associations embrace technology and how it can help them to be more efficient. While the growing pains for our new "normal" will continue, we also believe in 2021 the members of our boards, through the guidance and wisdom of their managing agents, will be more confident in their administration of their community association. We also believe community associations will resume replacement projects, reopen common facilities, and remain focused on preserving their community.

Embrace Learning New Things from the Pandemic

These have been difficult times for everyone. We have all been involved in this industry for over 20 years. Yet, we each have learned something new. For Howard, this is the first time in his life that he is working from home for an extended period of time (more than a day here or there). As the father of three young children, he has learned to laugh when one of his children barges into a ZOOM Board meeting by accident, and he has also learned that a 10 minute walk with your dog midday is quite therapeutic.

While prior to the pandemic, Gabby commonly worked from home, she has learned what a different experience it is when you "can" work from home versus you "must" work from home. Last spring her home was a remote office for Keough & Moody, a college campus and a high school. She and her husband are grateful for having more time than ever expected at home with their teenagers. The pandemic has taught (and continues to teach) Gabby that life is not black and white, and we need to adjust our mindset to balance our physical and mental well-being.

Jim's experience has been difficult and having a wife who is a medical professional has added another layer of the unknown. Jim has learned to adapt to new lifestyles with limited options, while making the best of it. Technology, looking for new things to do, and changing how to approach tasks, has helped him. New forms of entertainment have helped Jim too, including a neighborhood "wheel of fortune" contest where the weekly winner picked a charity and over $1,000 was made in donations! Fortunately, Jim learned new ways to stay in contact with family and friends so he can still carry on. Overall, Jim has learned to adapt.

Look for the Good in This Difficult Time

Yet, all would agree that this is a time to remember, we are not alone. We will get through this if we continue to listen to one another, treat each other with respect, and show grace to one another. The authors are thankful for this unique opportunity to collaboratively write this article, that may not have occurred, without the pandemic. We all hope you too can find something good from this most difficult time, and stay healthy and safe.

Gabby, Howard and Jim

by **Kevin D. Kelly, Locke Lord LLP**

Medical Leaves of Absence for Union Door Staff and Janitors in the Chicago Area

Union door staff and janitors in the Chicago area have extensive rights to take job-protected leaves of absence due to medical reasons. Their rights derive from applicable collective bargaining agreements ("CBAs") as well as federal and state laws, including the Family and Medical Leave Act ("FMLA") and the Americans with Disabilities Act ("ADA").

Because employee rights to leave under CBAs overlap with leave rights under applicable laws, employers often have difficulty navigating the many contours of these leave requirements. This article summarizes some of the key parameters employers need to heed. Because the Families First Coronavirus Response Act ("FFCRA"), which provides employees with specific leave rights for absences related to COVID-19, will sunset on December 31, 2020 and there is no certainty it will be extended, this article will not discuss the FFCRA and its impact. Regardless of whether the FFCRA is extended, however, an employee who is unable to work for an extended period of time due to COVID-19-related complications may be entitled to leave under the applicable CBA, the FMLA, or the ADA in any event.

Under the Apartment Building Owners and Managers Association ("ABOMA") janitorial CBA, employees with one or more years of service are entitled to take up to six months of unpaid leave for medical reasons in any 12-month period. This allotment increases to one year if the employee is unable to work due to a work-related injury. Under the ABOMA door staff CBA, employees with five or more years of service are entitled to take up to one year of unpaid leave for medical reasons in any 24-month period. Door staff with less than five years of seniority are entitled to shorter amounts of leave, although employees with less than one year of service are not entitled to any leave under the CBA.

Note that in addition to these extended unpaid leaves of absence, both the ABOMA janitorial and door staff CBAs provide for a certain amount of paid sick days to be used by an employee to receive pay during an otherwise unpaid leave of absence. Importantly, the ABOMA janitorial and door staff CBAs contain waivers of the Chicago Sick Leave Ordinance, meaning that employees working under these CBAs receive only the benefits provided by the CBAs and not what is provided by the Chicago Ordinance. For instance, although the Chicago Ordinance allows employees to take paid sick days for family member illnesses, the ABOMA CBAs allow for paid sick leave only for an employee's own illness.

In addition to the leave rights guaranteed by the CBAs, employees have rights to leave under the FMLA and the ADA. The FMLA applies to employers with 50 or more employees, while the ADA applies to employers with 15 or more employees. Many condo-

minium associations have fewer employees than these thresholds require, but that does not mean an association is free of obligations under the FMLA and ADA. This is because of a concept known as joint employment. Under the FMLA and ADA, an employee can be deemed to be employed by any entity that exercises substantial control over his or her work. Because many condominium associations retain a management company to direct and control building staff, employees may claim that they are employed jointly by the association and the management company and that the 50-employee threshold (for FMLA coverage) should be evaluated by totaling the employees of the association as well as the management company. With many management companies employing far more than 50 employees, this means that, for practical purposes, many associations have obligations to their employees under both the FMLA and ADA.

The FMLA entitles an eligible employee to up to 12 weeks of leave in a 12-month period. An employee is eligible for FMLA leave only if he/she has worked for the employer for more than 12 months and has worked at least 1,250 hours in the preceding 12 months. Employees can take leave under the FMLA when they have a "serious health condition" that precludes them from performing the essential functions of their job. They also can take FMLA leave for other reasons, including family member illnesses and the birth or adoption of a child.

The ADA obligates employers to reasonably accommodate employees with disabilities. A leave of absence from work is a form of reasonable accommodation, but a leave of absence is required as an accommodation only when the leave is relatively short and is for a definite period of time. Unlike the FMLA, the ADA applies at the start of an individual's employment and regardless of the number of hours an employee has worked. The ADA also requires that employers consider other reasonable accommodations (e.g., modifications to the job or the way in which it is performed) to allow an employee with a disability to continue to work. In addition to the FMLA and the ADA, Illinois law requires that employers accommodate women with pregnancy-related complications with time off work as necessary.

All of an employee's leave entitlements—i.e., those under a CBA and those under applicable law—are designed to run concurrently. In other words, the leave provided under the CBA does not add to the leave an employee may be entitled to receive under the FMLA or ADA—all leaves run together. However, in order to ensure that all of an employee's leave entitlements run concurrently, an employer must comply with all of the notice obligations required by law, particularly under the FMLA, which obligates employers to inform employees that time off work counts against their FMLA leave entitlement. For example, many employers mistakenly believe that the FMLA doesn't apply when an employee has a work-related injury and is receiving workers' compensation benefits. If an employer forgets to designate leave taken for a work-related injury as FMLA leave, an employee who took three months off for a work-related injury could return to work and then a few weeks later request 12 additional weeks of FMLA leave.

Navigating the maze of employee leave entitlements is a complex endeavor that requires careful attention to detail. Property management should consult with counsel if they need clarity regarding the confluence of leave requirements.

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by Diane F. Pagoulatos, Homeowner and Board Member

Quirks and Perks of Community Association Living in Pandemic Times

These are strange times in community living. Covid-19 has caused many residents to be at home and experience new realities in their environment. Community residents are noticing more about their environment both inside and outside their units. This involves noticing the capital improvements which have been made or need to be made in their communities.

Many residents are working remotely from home and some have increased time on their hands. All these new realities have brought a new participation among home owners attending Zoom Meetings. Many of these residents have never attended in person Board Meetings before. They are now involved in matters that were of no interest to them previously. Apathy has turned into over involvement among home owners and renters alike. We are living in a time when community residents believe "their turf" demands certain rights, which at times are against the community documents and regulations. Many of these new realities have resulted in the following positive perks.

Board Members and managers alike have stated these resulting Positive Perks:

- Increased regular participation at Zoom Meetings among home owners in large numbers.
- Increased communication with and requests of Management Companies for repairs pending.
- Increased awareness of the common elements and limited common elements.
- Demands by the home owners and renters alike to upgrade, improve, or speed up maintenance and capital improvements projects on the property or in their units.
- Demands by Board members to their management companies for faster vendor bids, maintenance projects to happen at record speed and projects (before they may have been put on hold).
- Demands by Board members to have their management companies apply for lines of credit and loans so these long termed planned capital improvements may happen sooner than their five year plans or Reserve Studies deemed necessary.

Increased Activity for Vendors

This has resulted in an increase of vendor generated business. Vendors are being called on to bid projects such as balcony restoration, water proofing, pond management services, supplemental landscaping projects, fire pump pipe replacements, engineering studies, roofing projects, added property lighting, exterior painting projects to buildings and Clubhouses, additional fencing to be installed, swimming pool repairs and resurfacing. Exterior projects were accomplished before interior projects as exterior projects were more manageable during the pandemic environment.

With the lower interest rates, many bankers are receiving an all-time high level of inquiries for lines of credit and loans, thus local banks are seeing a tremendous increase in business.

More Questions for Attorneys

Attorneys are experiencing high call rates from residents to inquire about health and safety issues in Condo buildings and common elements. Questions such as "What can the board regulate and fine for and when?" Annual Meeting procedures as well as electronic and in person voting procedures are several of the inquired topics.

Annual Meetings were a challenge this year for many Associations. Election procedures had to be adapted due to the Covid-19 environment. Assessments, delinquency and lien questions due to the Governor's Executive Orders are also topics of the Manager and Board President concerns. These increased inquiries and the Covid-19 conditions resulted in many Zoom Legal Seminars provided by Association attorneys. Community Association Institute (CAI) provided many National and Local Webinars for Boards, Homeowners and Managers. These assisted those interested in how to navigate the "new normal" and the decision making processes

needed to comply with federal, state, city and municipal edicts amid the Covid atmosphere.

More Complaints & Potential Rule Violations

Also Board Members have noticed an increase in potential violations, in which community resident owners and renters have "fought" Boards on "their rights" whether it is parking driveway rights, expressing political beliefs through signage, protests involving open or closure of Association pools, denial of use of the Clubhouse facilities and work out rooms, fireworks usage for cultural celebrations and many more new realities in this age of "at home community living."

More Experience & Expertise Being Gained

Board Members and managers have gained expertise in their individual Association covenants, by-laws, rules and regulations as well as municipal, state and governmental regulations. They need to be checking constantly with the latest CDC guidelines which are regulating human behavior on their properties relative to the pandemic. Being informed is paramount for all involved in community associations. Knowledge of the covenants and rules and regulations is vital for community enforcement. Having documented evidence at hand is of prime importance and so is patience and consistent enforcement.

A Board Member now needs to be fully engaged in the complex role of a Board Member if they have not been involved prior to the Covid-19 times. Board Members need to be aware of the "pulse" of the community. Being aware of community feelings is a top priority. Monitoring what happens on the property is of prime importance. "Warming a seat" as a Board Member is history.

More Stress and Strain

In an age where residents state to managers, that "rules don't matter." "This is my driveway, I can park what I want there" places stress and strain on managers, Board Members and fellow neighbors.

These are the quirks that were observed by many Board Members, managers and resident owners along with coping comments.

- Due to many pools and pool decks being closed this summer, community residents were sun bathing with their bikinis and swim attire on driveways and common elements. Not exactly a Baywatch scene!
- Board Presidents were met by residents in swimwear carrying protest signs on their front lawns because the Board voted to close the Association pool early last summer. Signs stating "We pay assessments, open our pools". Oh the powers of protest!
- Plastic kiddy pools were an alternative to Clubhouse pools, often grounded on driveways and common elements. What a sight from a second floor window!!
- Back yard picnics with portable tables with full food buffets and lawn chairs on the common elements for celebrations of Fourth of July that were usually held on the pool grounds. This activity was a nightmare for a landscaper who has been working on developing the turf! Bring on the seed blankets or sod.
- Subdivisions using other subdivision's common elements as a forest preserve atmosphere for their daily walks, dog runs, and dog depository grounds. Who needs a dog run? No doggie bags needed here. It's not our property. We can do what we want. No one knows us.
- Condo common stairwells and hallways were used to smoke, drink and be away from parental regulations. Hey my parents are busy on-line! They don't have time to watch me!
- Catalytic converters being stolen from cars sitting idle (not being used) in lots due to pandemic related remote business at home stays. Bring on that metal money $$.
- Roaming children who normally would be at school using the common elements as their playground; skateboarding in the private streets and climbing trees or running in condo hallways door knocking as they go. Knock, knock who's there?
- Residents complaining that the cars were going too fast while their children were playing in the main roadway. Move over Tesla we got a Little Tikes Cozy Coupe Thunderbird coming our way!
- Constructing "mini playgrounds" out of common element landscaping to entertain the children was found on many properties. Rope swings and tents also were constructed. Let's have a Tent Community Sleep over for the kids at the Clubhouse. I am practicing my Tarzan call right now.
- Border fencing having to be constructed to keep neighboring subdivisions from sending playmates over through the brush border landscaping. I'm sending Ollie over for a play date. Pass him back to me in about an hour. I have an important Zoom meeting soon.
- Residents telling landscapers to go home on Saturdays while landscapers play catch up with their weekly landscaping runs. Your gas motor blower is interfering with my Zoom Meeting.

Fireworks were released in the driveways for cultural celebrations with no regards to safety or Illinois law fireworks restrictions. Let those fountain rockets go!" Oh look at those gorgeous colored embers settling on the new neighbor's Volvo!

- Pool wars happening at Zoom Meetings while Boards wrestled with the dilemma of opening/ not opening and procedures for their pools. What, I have to bring my own chair, have my temperature checked? What is this a hospital or a pool?
- Residents stating that they had prior permission from the Management to use the Clubhouse for a party planned a year ago regardless of the pandemic. Residents started singing "It's my Party and I'll do what I want" when told their party was cancelled.
- Fireworks were released in the driveways for cultural celebrations with no regards to safety or Illinois law fireworks restrictions. Let those fountain rockets go!" Oh look at those gorgeous colored embers settling on the new neighbor's Volvo!
- Residents ignoring the Clubhouse fitness closure restrictions and sneaking out in the dead of night in their underwear to "take a shower" in the Clubhouse pool locker rooms. Is he wearing briefs or boxers on the security camera freeze shots? I can't tell.

So as we go forward, all Boards and managers along with their management companies need to navigate the balance of the Covid-19 journey. Here are some parting thoughts that might be helpful:

- The awareness of Covid-19 impacted behavior is always in back of every decision and regulations formulated.
- What is needed is hope, patience, tolerance and knowledge based decisions.
- Don't rush to judgements and final decisions.
- Kindness is a useable tool. Smile and look for common ground.
- Resist the first impulse to say: "Are you crazy? You want to do what?"
- Breathe deeply and think before you tell someone your real thoughts. Impulsive emotional comments will only inflame a situation.
- Everyone is acting under tremendous stress, so realize it and be part of the solution. Humor can also assist us through these new realities.

Enforce consistently and regulate wisely! People are watching!

INDUSTRY HAPPENINGS

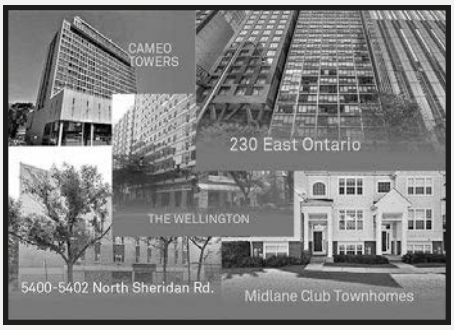
FirstService Residential

FirstService Residential Vice President **Ian Novak,** AMS, CMCA, CPM, PCAM, was elected Treasurer of the Chicago Council of the Institute of Real Estate Management (IREM) in November. IREM's Executive Council works to provide education, industry leadership and direction to real estate managers, residential and commercial management firms in Northern Illinois. Mr. Novak brings a great combination of practical residential property experience and managerial acumen to his position while managing a team of regional directors and onsite management staff. During his long tenure in the industry, he has overseen an array of condominiums primarily located in Chicago's Gold Coast neighborhood and Evanston, Illinois.

FirstService Welcomes Five New Communities: In November of 2020, FirstService Residential was pleased to welcome five new communities to their family of managed properties.

The Wellington is a mid-rise condominium building in an ideal Lakeview location, steps from transportation, shopping, Diversey Harbor, Lincoln Park, and the lake. A popular mid-century building, The Wellington was built in 1959 and boasts 18 floors of residences totaling 99 units. Building amenities at The Wellington include a roof deck and solarium, dedicated bike room, on-site garage with monthly parking, 24/7 laundry room, dedicated storage lockers and a live-in engineer. This quiet, well-run boutique building is pet-friendly and perfect for first time buyers, families and more.

↗ *Ian Novak*



230 East Ontario Condominium Association is a beautiful 28-story building located in Chicago's Streeterville neighborhood with 147 private units. Just steps away from the lakefront, the Magnificent Mile, Navy Pier Millennium Park, and Northwestern Memorial Hospital. Living here offers residents the perfect location to access public transportation to enjoy the entertainment, culture, shopping, fine dining, and nightlife that the 'Windy City' has to offer. This full amenity building has a 24-hour doorman, fitness room, roof top pool, sundeck that boasts spectacular views, and an entertainment room.

5400-5420 North Sheridan Road Condominium Association is a stunning double building in Chicago's Edgewater neighborhood. It is nestled in a walker's paradise where residents can run daily errands without a car. This community is steps away from the lakefront, Foster Beach, Berwyn Red Line stop, express buses, restaurants and all that Edgewater has to offer.

Midlane Club Townhome Community was built in the mid 2010's. It is located in Wadsworth, Illinois south of Yorkhouse Road and west of Delany Road. The town homes feature floor plans ranging in size from 1,729 to 1,766 square feet of living space. Amenities include clubhouse with exercise facility, outdoor pool, and party room. The association is close to shopping, entertainment, restaurants, forest preserves and the Interstate highway.

Cameo Towers is a friendly and vibrant non-smoking community located in Elmwood Park, a suburb just a few miles west of downtown Chicago. Cameo Towers' location provides easy access to shopping, dining, public transportation, and entertainment. Building amenities include central heat and air conditioning, laundry room on most residential floors, outdoor swimming pool and sundeck, on-site management office and a penthouse Hospitality Room that overlooks the city skyline.

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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.

From the Editor

↗ *Mike Davids*

We have had a mild start with very little snow to start the winter season. No doubt we will still have a number of snow events and plenty of cold stretches. The mild weather was welcome and made it easier to do things outdoors as we all struggle with Covid-19 restrictions that prohibit indoor options for dining, recreation, and other activities.

Modern medicine has made great progress against Covid-19 and we now have multiple vaccines with amazing efficacy becoming available. However, we all still need to be vigilant about practicing social distancing and considering the health of others in all we do until the vaccines are available to the general public. Like everything else in our lives, the recent holidays were impacted by Covid restrictions. Hopefully you still found safe ways to enjoy the season. At least we do have hope for a return to something near normalcy at some point this year as long as the administration of vaccines goes as planned.

Our cover story is a report on our annual "Condo Lifestyles State of the Industry" (SOI) program which was done as a special digital edition. We tried to capture a snapshot of the issues facing Associations by summarizing the responses to some common questions posed to a panel of experts. We covered a variety of current hot topics including the types of capital projects being done as well as how Covid is impacting projects and association's financials.

Our second story by attorneys Gabriella Comstock, Howard Dakoff and Jim Slowikowski provides a legal update and their perspectives on dealing with Covid-19. Topics covered in this article include rules violations, virtual meetings, absentee voting & elections, handling of positive Covid-19 cases and following safety protocols of amenities that are open. Ms. Comstock also provides a summary of new laws and several court cases that directly impact community associations.

An article in our Board Basics column takes a look at some of the quirky and strange situations that have occurred at associations during the pandemic. Some tongue-in cheek responses to these situations are also provided.

Another legal update article provides some examples of why following proper procedures for meetings and elections is important along with some suggestions on how to ensure compliance with your governing documents.

An article on properly funding your capital reserve account in advance and our regular Industry Happenings column also appear in this edition.

There is no way to know when we will be able to resume in-person attendance at events in 2021. As soon as we know how and when we can hold events, we'll send out information.

As we welcome in another new year, we encourage you to make your association and your community all it can be. If you have an idea that would benefit other Community Associations, a story to share, or some advice on how to avoid a problem or overcome a challenge, please call our office at 630-932-5551 or send us an e-mail (mdavids@condolifestyles.net). ✠

Warm Regards,
Mike

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by Gabriella Comstock – Keough & Moody, P.C.

2020 LEGISLATIVE & CASE LAW UPDATE

While little was done this past year in the legislative branch, due to the pandemic, we did see quite a few cases decided by Illinois appellate courts related to community associations. The following is a brief summary of the cases decided and how they may affect community association living:

Huntington Club Master Homeowners Association v. Platinum Poolcare Aquatech, Ltd., 2019 IL App (1st) 190424

The Plaintiff/Association entered into a contract with a swimming pool maintenance and repair company to have the pool painted and certain repairs completed. While the pool was being painted, the Association alleged the pool was damaged. Because a pebble pipe at the bottom of the pool was obstructed, groundwater pressure accumulated under the pool and caused the pool to become buoyant and float out of the ground. The Association filed a lawsuit against Defendant alleging a breach of contract and negligence, as it alleged that the defendant could have visually and physically checked the pebble pipe for any blockages or obstructions. The trial court ruled in favor of the defendant and granted its Motion for Summary Judgment. The appellate court found that the Association failed to establish that Defendant had an obligation to check the pebble pipe when performing the work per the parties' contract. The appellate court found that the defendant was not the proximate cause of the injury to the plaintiff's pool. It was speculative for the Association to conclude that the damage to the pool would have been avoided if the defendant visually checked the pebble pipe after the pool had been drained. Likewise, the Association's argument that the defendant could have taken reasonable steps to prevent the damage to the pool failed, as it assumed the pool was clogged when it was drained when there was no such evidence. The appellate court found that there was no evidence to contradict the conclusion that Defendant acted consistently with the standard of care it owed the Association.

Ford City Condominium Association v. Wilmington Savings Fund Society FSB DBA Christiana Trust, not in its individual capacity but solely as trustee for BCAT 2015-14BTT, et al., 2020 IL App (1st) 190112

A unit within the Association was sold at a judicial foreclosure sale, and the mortgagee of the property was the successful/highest bidder at the sale. Approximately six (6) months after the judicial sale was confirmed, the Association sent a statutory demand to the new owner of the unit for past due assessments, late fees, and collection costs. A little over a month after sending the demand notice, the defendant made a payment to the Association for eight (8) months of regular and special assessments. Defendant

claimed its payment extinguished the Association's lien on the property for unpaid, pre-sale common expenses and collection costs. The Association disagreed and initiated an eviction action. After conducting a trial, the trial court ruled in favor of the Association. On appeal, the appellate court reiterated that Section 9(g)(3) of the Condominium Property Act required prompt payment to be made by a purchaser at a judicial sale, in order for it to extinguish the condominium association's pre-sale claims. The appellate court affirmed the trial court's ruling that the payment by Defendant, approximately eight (8) months after the sale, was not prompt. Hence, the Association's lien was not extinguished. The appellate court upheld the trial court's award for specific attorney time entries, which Defendant argued should not have been awarded.

Thomas Miller v. Tamerlane Homeowners' Association, et al., 2020 IL App (1st) 191425

Plaintiff filed suit against the Association and others to recover for stormwater damage allegedly caused by changes to certain property. Before withdrawing as counsel for Plaintiff, Plaintiff's attorney sent a notice of its attorney's lien to the defendants. Plaintiff settled his claims and received monetary compensation from the defendants, or their insurers, but with the agreement that each party was to bear its own fees and costs. Upon learning of the settlement, Plaintiff's former law firm filed a petition to enforce its attorney's lien, as Plaintiff failed to pay the law firm for attorneys' fees and costs, pursuant to the parties' agreement. Most of the defendants objected to the law firm's petition. The trial court denied the law firm's petition. The appellate court ruled that the trial court properly concluded the law firm did not perfect its lien, since it did not complete service of its notice of attorney's lien during the pendency of its representation of the plaintiff.

Exchange Condominium Association v. Isaiah Hatcher, Jr., et al., 2020 IL App (1st) 190146-U

The Association filed an eviction action against Defendant, a condominium unit owner. Judgment was entered in favor of the Association and against Defendant. The defendant filed an appeal arguing that the trial court did not have subject matter jurisdiction over the case since the Association failed to properly serve a thirty (30) day notice demand under the applicable statute. The Association's initial lawsuit named First Nations Bank Land Trust and All Unknown Occupants. Defendant Hatcher petitioned to intervene in the case since he purchased the condominium unit at a judicial sale and placed the unit in a land trust where First Nations Bank was the Trustee. Hatcher was the beneficiary of the trust. The Association nonsuited First Nations Bank Land Trust and named Hatcher as a defendant. Defendant Hatcher argued that the Association failed to serve the owner of the unit with the required statutory demand notice. Defendant Hatcher did not deny that he never paid assessments. The appellate court held that the Association's alleged failure to comply with the Act's notice requirements is not a basis to challenge the circuit court's subject matter jurisdiction. The appellate court concluded that the trial court had subject matter jurisdiction over the matter.

Acuity Ins. Co. v. 950 West Huron Condominium Association, 2019 IL App (1st) 180743

Plaintiff, Acuity Insurance Company, as the commercial general liability (CGL) insurer, brought an action seeking a court order that declared it had no duty to defend insured subcontractor in the general contractor's underlying third-party action. The lawsuit alleged that the subcontractor's work caused or contributed to defects, which resulted in water damage to condominium units within the Defendant/Association. The subcon-

tractor's insurer, who did defend the subcontractor and ultimately settled the claims, brought a third-party action against the CGL insurer for contribution to split the costs of the settlement. The trial court ruled in favor of the plaintiff and against the coinsurer, holding that the CGL insurer had no duty to defend or otherwise split the cost of the settlement. On appeal, the appellate court ruled that the trial court erred, in that the original lawsuit filed in the general contractor's third-party action triggered the subcontractor's insurance policy, and that both of the subcontractor's policies covered the same risk. Therefore, both insurers, the CGL insurer and coinsurer, should have shared equally in the settlement.

Sherwood Commons Townhome Owners Association v. DuBois, 2020 IL App (3d)180561

Plaintiff/Association brought an eviction action against a condominium unit owner for the failure of the owner to pay a water bill assessment. The trial court ruled that based on the ambiguity in the governing documents, the water bill was not an assessment and, while the owner may owe the water bill, Plaintiff cannot proceed under an eviction action for repayment of the amounts owed for the water bill. Plaintiff appealed the ruling. The appellate court held that the Association failed to provide evidence that the water bill was an assessment or that the water bill was owed to the Association, as opposed to a utility provider. The Association, the court ruled, also failed to prove that the water bill was a common expense or otherwise "lawfully agreed upon" by the owners of the association. Finally, the appellate court held that the Association failed to establish or even prove the amounts owed, which collectively resulted in the appeal being denied and the trial court's ruling affirmed.

Oak Run Property Owners Association v. Basta, 2019 IL App 3d 180687

Plaintiff/Association brought a lawsuit against adjacent owners (neighbors) and the sanitary district seeking a court order declaring the rights of the parties as it related to a retaining wall. The retaining wall was approved by the Association. It was located within a utility easement approximately two (2) feet from the neighbor's property line. The retaining wall was substantially completed, but not yet backfilled or landscaped. Before this could be done, the neighbors, who did not build the retaining wall, filed a counterclaim seeking monetary damages and injunction seeking removal of the retaining wall. While the trial court held that the Association's governing documents were not necessarily followed and the wall may not have complied with the provisions of the governing documents, the court did find that the wall was essentially "completed," pursuant to standard definitions of completion, which included "substantial completion." This was important as the governing documents provided that no approval was required if an action was not filed before the completion of any addition or alteration. Additionally, the neighbor's injunctive action was denied, as the trial court found that they had an adequate remedy at law to seek monetary damages related to any potential devaluation in their property. The neighbor, who filed the injunctive action, appealed. The appellate court affirmed the trial court's ruling, holding that the definition of completion, to include substantial completion, was proper. As to the claim for an injunction, the appellate court held that the trial court erred in finding "no clearly ascertainable right," but it properly denied the neighbor's injunction, because the neighbor did have an adequate remedy at law. That is, any devaluation of the property could have been cured with the installation of landscaping for a specific cost, and that amount could have been recovered from the neighbor who installed the wall.

Shannon Court Condominium Association v. Armada Express, 2020 IL App(1st) 192341

Plaintiff/Association sought to recover the expenses, from the purchaser of the unit at a judicial sale, incurred to make the unit rentable after it took possession of the unit. In addition, the Association sought to recover attorneys' fees incurred to initiate a collection action against the pre-foreclosure condominium unit owner. The trial court granted the Defendant's motion for summary judgment finding that the rent collected by the Association for the rental of the unit was to be applied to the amount claimed due and owing for the six (6) months of unpaid assessments, and finding Defendant tendered the amount due pursuant to Section 9(g)(4). The appellate court disagreed and concluded that pursuant to Section 9(g)(4) of the Illinois Condominium Property Act, the Association can only recover the costs that are part of the six (6) month period. The question then became what costs are part of the six (6) month period. The appellate court looked to see when the expenses were "incurred," so as to determine when the relevant expenses should be deemed part of the unit owner's share of the common expenses. The appellate court determined that when deciding what is part of the common expenses, it is not when the expense was paid, but when the expense was incurred. Hence, so long as the fee was incurred in the six (6) month time frame, it could be recovered by the Association. The appellate court also held that the rent collected by the Association was to be applied pursuant to the provisions of Section 9-111.1 of the Code of Civil Procedure.

Ruiz v. Cal-Ful Condominium Association, 2019 IL App (1st) 181734

Plaintiffs/condominium unit owners alleged a breach of fiduciary duty against members of the board of directors for settling with the Association's insurance company for $51,500.00 and authorizing the demolition of the commercial units following a fire that damaged both commercial and residential units within the Association. While there

were two (2) Associations, one for the residential units and one for the commercial units, in practice, there was only one Association that governed both Associations. In addition to there being one Board of Directors, one account for both Associations, there was one insurance policy for the building. Plaintiffs alleged that the amount offered by the insurance company to repair the commercial units was grossly inadequate, and the directors breached their fiduciary duty by accepting it. Further, they alleged that the directors failed to provide the unit owners with the entire $51,500.00 to repair the units, and it was a breach of fiduciary duty for the directors to authorize the demolition of the commercial units prior to investigating whether the demolition was necessary, obtaining the unit owner's permission, or verifying that the insurance policy would cover the cost of repair and replacement. Defendants argued that Plaintiffs led them to believe there was only one (1) Association and this should prevent Plaintiffs from asserting their complaint. The trial court agreed with the defendants. However, on appeal, the Court held that Plaintiffs were not equitably estopped from claiming breach of fiduciary duties. In its reasoning, the Court stated that the directors' reliance on the unit owners' representations that there was only one (1) association did not lead the directors to breach their fiduciary duties; it led the directors only to exercise those duties in the first place. The Court added that the directors suffered no detriment merely from undertaking those fiduciary duties.

Kai v. Board of Directors of Spring Hill Building 1 Condominium Association, 2020 IL App (2d) 190642

Plaintiffs/condominium unit owners filed a lawsuit alleging that members of the board of directors breached their fiduciary duties and committed constructive fraud and civil conspiracy by forcing a bulk sale of condominium units to a buyer that was controlled by board members on terms that disadvantaged the unit owners. The trial court dismissed the plaintiffs' complaint, based on the directors' assertion that the unit owners could not prevail on a claim of breach of fiduciary duty, as the Illinois Condominium Property Act is the sole remedy to unit owners in the event of a forced sale. The appellate court concluded that the members of the board of directors' fiduciary duty remained in force and applied to bulk sales, pursuant to Section 15 of the Condominium Property Act. The appellate court also held that the business judgment rule, which is a rule of law intended to protect directors who have been careful and diligent in performing their duties and have made honest mistakes in judgment, was not applicable and did not support dismissal of the unit owners' complaint. The appellate court also concluded that the rescission of the contract was a remedy available to the plaintiffs.

Thai v. Triumvera 600 Naples Court Condominium Association, 2020 IL App (1st) 192408

Plaintiffs/owners of a condominium unit brought an action against the defendants, which was the condominium association and members of its board of directors, alleging breach of fiduciary duty, defamation, invasion of privacy, and violations of the Illinois Human Rights Act. Plaintiffs alleged that the board members harassed them due to their Vietnamese national origin and familial status. The trial court granted summary judgment for the defendants. However, the appellate court reversed the trial court's decision. The appellate court found that the legitimate, nondiscriminatory reason that the board of directors had for initiating the court action against the unit owners (i.e., seeking injunctive relief for cleaning, and installation of soundproofing insulation) was not the motivation for the board's decision. Therefore, the trial court erred in granting summary judgment in favor of the defendants, and the matter was remanded for further proceedings at the trial court level.

21 Kristen Condo Association v. Pioneer Engineering, 2020 IL App (1st) 191868

Plaintiffs/owners within a condominium association sued an engineering firm and the engineer who worked for the company alleging negligent misrepresentation as to the condition of the condominium building. The developer of the Association engaged the defendant to complete a Property Condition Assessment. When selling units within the Association, the Developer provided a copy of the Property Condition Assessment to prospective purchasers. Plaintiffs alleged that the defendant negligently misrepresented the condition of the building. The trial court dismissed the complaint stating that the Association failed to state a claim for relief. The Association alleged on appeal that it stated a cause of action for negligent misrepresentation. With its complaint, the Association sought relief alleging that the defendant breached its common law duties to prospective purchasers, who relied on the report to decide whether to purchase a condominium unit. Defendant argued that members of the Association could not reasonably rely on its report, as the report stated that it was prepared for the sole use of the client, who was identified in the report as the developer, and it also stated that the report should not be relied upon by others without the engineering firm's permission. The appellate court held that the defendant knew the developer was using the report for sales of the condominium units and that the complaint adequately alleged that the Defendant provided the report in order to provide guidance to prospective purchasers. The appellate court also held that the report included actionable statements of facts and not just the engineering firm's opinions. Hence, the appellate court reversed the dismissal of the Association's complaint and remanded the case for further proceeding in the trial court.

Brandenberry Park Condominium Association v. Taleb, 2020 IL App (1st) 200442

Defendant is a unit owner within the Plaintiff/Association, who remodeled his unit. At the time of remodeling, the defendant removed a beam partially located in the Unit. When the Association learned that a wall was removed, it sent a notice to the defendant notifying him that he was in violation of the Association's declaration, and he needed to hire an engineer and/or contractor to replace the structural beam that was removed. Defendant disagreed that the wall removed contained a structural beam. The Association filed suit against the defendant alleging the defendant remodeled his unit without the approval of the Association, and, as a result of removing a structural beam, the ceiling in Defendant's unit began to sag and the floors in the units above Defendant's unit also began to sag. The parties reached an agreement as to replacing the beam and the costs thereto. The Association filed a petition for attorneys' fees and remediation costs, seeking a judgment of $48,993.90 against Defendant. After a hearing, which was not an evidentiary hearing, the trial court entered the monetary judgment against the defendant. Defendant filed a motion to reconsider, which was denied as the defendant failed to present any "new" evidence. On appeal, the appellate court found no error by the trial court. The appellate court found no reason to "disturb" the trial court's determination, and it affirmed the trial court's finding.

by Kristofer Kasten, Altus Legal, LLC

Horseshoes and Hand Grenades: Why Procedure Counts

Close only counts in horseshoes and hand grenades. It is an idiom that many have heard at some point during their lives. It is generally used to convey the idea that being almost successful or accurate is not the same as being successful or accurate. It is also a concept that community association boards and managers should keep in mind when carrying out the operation and administration of the association.

Palm II & Notice Procedures

In 2014, the Appellate Court of Illinois published its opinion in Palm v. 2800 Lake Shore Drive Condominium Association (affectionately referred to as "Palm II"), which sent seismic waves shaking the foundation of our then understanding about what constituted a board meeting. By this point in time, I suspect most people working in the community association industry are acquainted with the Palm II decision. Although Palm II may have been a surprise on some issues, resulting in changes to board operations, there is an aspect of that decision that was not surprising. At the end of that opinion there is a short section addressing an issue raised over notice procedures. The Court's ruling on that issue reaffirmed well established Illinois law.

Procedural Example

Before proceeding any further, an example would be useful for illustrative purposes in our below discussion. Imagine that the Greenacres Condominium is a mid-rise building with a common main entrance, lobby, and single elevator. The board is planning the Greenacres Condominium Association's upcoming annual meeting at which the owners will elect new board members. The board also plans to schedule a meeting of the new board that will be held immediately following the annual meeting. The board sends out an email notifying the owners of the date and time of both the annual meeting and the board meeting. That email also includes a proxy form. The meetings are held on the given date. The board then receives a letter from an attorney representing an owner. That letter raises various procedural issues that the board feels are "technical", but that should not be the basis for having to redo the election.

Breach of Fiduciary Duty

Returning to Palm II, the relevant issue in that case to our discussion involves the association's custom and practice for giving notice of board meetings. The association would mail notice of board meetings to nonresident owners. However, with respect to resident owners, the association would leave notices in front of the door of those resident owners' units. At issue was whether the board was required to give notices of board meetings pursuant to a provision of the association's declaration requiring that notices be mailed to

owners. The defendant association argued that it did not have to comply with that declaration provision because that provision conflicted with the Illinois Condominium Property Act (the "Act"); specifically, Section 18(a)(9) of the Act. The association's argument was based on Section 4.1(b) of the Act. After reviewing Section 4.1(b) of the Act, the Appellate Court held that Section did not apply. Accordingly, the Appellate Court upheld the trial court's finding that the board breached its fiduciary duty when it failed to mail notices of board meetings in accordance with the association's declaration.

Compliance with Governing Documents

In Illinois, board members of a condominium association have a fiduciary duty to the association and its members. That fiduciary duty includes, among other things, the obligation to strictly comply with the association's governing documents and the Act. Such obligation has been well established by a handful of seminal Appellate Court decisions (for those interested, see: Board of Managers of Weathersfield Condominium Ass'n v Schaumburg Ltd. Partnership; Wolinsky v. Kadison; Litvak v. 155 Harbor Drive Condominium Assn'n; and Davis v. Dyson). Although those cases involve condominium associations, the Illinois Appellate Court has held that board members of a common interest community association owe the same fiduciary duty to their association and members (see: Chiurato v Dayton Estates Dam & Water Co.).

Strict Compliance

Before we get back to our example, it may be useful to take a closer look at what it means to "strictly comply." Generally, strict compliance is when something is done in a manner that completely and correctly adheres to given prescribed requirements. For example, if a meeting notice is required to contain certain information (e.g., date, time, location, and purpose) and be given in a certain manner (e.g., mailed within a given time prior to the meeting), then a strict compliance standard requires that such notice include all of those elements to be a valid notice.

Now that we have gotten the legal stuff out of the way, we can use our Greenacres Condominium example to look at the practicalities of following procedure under a strict compliance standard. But before we venture further into our Greenacres Condominium example, readers may have noted that the author omitted several pertinent facts. That was intentional. It gives us a lot to work with.

Do E-Mail Notices Comply?

In our example, the board sent out notice of the annual meeting and board meeting by email. Was that an appropriate means of giving notice? The answer is not clear from the facts given in the example. It depends on the procedure set forth in both the association's governing documents and Act that the board was required to follow. If, prior to emailing the notices, the board had properly adopted rules authorizing the delivery of notices by email and all owners had given written authorization for such type of delivery, then emailing the notices would have been an appropriate means of giving notice. Conversely, if no such rules had been adopted, then notice via email alone would not have been appropriate; instead, notice should have been sent in accordance with the association's declaration and bylaws. However, even if email was an appropriate means to give notice, that does not mean that the notice for either the annual meeting or the board meeting was valid.

How Much Advance Notice is Required?

With respect to the annual meeting, the notice should have been given not more than 30 days and not less than 10 days before the date of the meeting,

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as required by the Act. Also, that notice should have included the time, place, and purpose of the meeting. In the event the meeting was to be conducted via Zoom, or other video/audio conference meeting application, then such information should have been included in the notice. If the notice was not given within the prescribed time or did not include the necessary information, then it would not have been valid.

Posting Notices and Regular Mail

With respect to the board meeting, the notice should have also been posted in the entranceway, by the elevator, or other conspicuous locations in the common elements at least 48 hours before the meeting. If the declaration or bylaws required notice of board meetings to be mailed to all owners, and an owner did not give written authorization for notice to be emailed, then notice would also have had to have been mailed to that owner in accordance with the association's declaration and bylaws. The failure to post notice of the meeting, and mail as may have been required under the declaration or bylaws, would render notice invalid.

What About Proxies?

Within our Greenacres Condominium example there are other instances in which following applicable procedure and other requirements would be essential to validity. For example, the Act sets forth certain requirements for proxies that are issued by the association for use in an election of board members. If the association wants to dispense with proxies and use absentee or direct ballots, then the board must adopt appropriate rules following the procedures set forth in the Act. (Note that the Condominium Property Act and the Common Interest Community Association Act have similar provisions governing the use of direct/absentee balloting, but there are differences.)

Consequences of Invalid Meeting and/or Election

The consequences for a board failing to strictly comply with the procedures and requirements set forth in the association's governing documents or applicable statute can range from an inconvenience to monetary damages owed to one or more owners. For example, if the notice for the annual meeting was not proper, then the entire election may be invalid and may have to be redone. Or, if notice for a board meeting was not proper, then the meeting was not valid. If the meeting was not valid, then that could call into question board action taken at that meeting. Perhaps holding the meeting again with proper notice can cure any deficiencies and legitimate board action. But what if such corrective action was never taken and the special assessment adopted by the board at the invalid meeting is overturned by a judge? That special assessment may have to be refunded, which could be a significant problem.

Close May Not Be Good Enough

Considering the foregoing, the bottom line is that boards and managers need to understand what procedures apply to any given situation. A board's fiduciary duty obligates the board to comply with all applicable procedures and other requirements. The failure to comply with those procedures and requirements can invalidate the action taken, which can have further consequences on subsequent actions. In the world of community associations, close may not be good enough. If there are ever any questions about the proper procedure or procedures to follow, make sure to consult with a knowledgeable professional, such as the association's attorney.

INDUSTRY HAPPENINGS

Habitat Company

The Habitat Company, a leading U.S. multifamily developer and property manager, announced today the firm has been awarded property management of two Chicago condominium buildings – 899 South Plymouth Court and South Commons Phase 1 Condominium Association. The properties will add 1,010 new units to the firm's condo management division, effective Jan. 1, 2021, and culminate a year of rapid growth for Habitat, which saw its condominium portfolio double over the past 12 months.

"Our commitment to on-site management, comprehensive operations services and personal interaction with board members and owners truly resonates with each association," said **David Barnhart,** vice president of condominium management at Chicago-based Habitat. "In a year that's been plagued by difficulty and hardship, condominium associations realize the value in partnering with a firm like Habitat, which has more than 45 years of experience in successfully navigating through challenging times due to its creative solutions and talented, robust management team."

The addition of **South Commons Phase 1 Condominium Association,** a 760-unit high-rise at 3001 South Michigan Ave., overlooking Dunbar Park in Chicago's Bronzeville neighborhood, and **899 South Plymouth Court,** a 250-unit high-rise in Chicago's South Loop, come on the heels of three other sizable Chicago condominium management contracts awarded in 2020. The firm announced its management of the 724-unit **Park Tower** in January, followed by the 234-unit **Metropolitan Tower** in July and the 323-unit **Eliot House** in September.

↗ *South Commons Phase 1 Condominium Association*

↗ *899 South Plymouth Court*

"In the short 18 months that Dave has been a part of Habitat's team, he's helped grow the Chicago condo portfolio by approximately 110%," said **Matt Fiascone,** president, The Habitat Company. "With his deep understanding of the condo management industry, we anticipate his team will continue to meet or exceed our growth goals. His drive, passion and expertise has yielded tremendous results and we are very fortunate to have him as a part of our team."

Condominium associations managed by Habitat have access to the same comprehensive suite of services Habitat provides at the properties in its rental management portfolio, including a mobile work order system, on-site management team, and extensive engineering and facilities experts to ensure each building is well-maintained with capital improvements planned and expected.

"Whether it's our monthly Coffee and Conversations meetings with owners or the personal connections forged by our on-site teams, Habitat is well-suited to continue growing its management portfolio of condominium buildings in metropolitan areas like Chicago," noted Barnhart.

Habitat's condominium portfolio now includes 14 associations and 5,071 units under management in Chicago and Southeast Michigan. Future growth will continue with a focus in markets where Habitat has a presence, allowing for a faster onboarding for new associations, according to Barnhart.







by Salvatore Sciacca – Chicago Property Services

Top 10 Reasons Why You SHOULD Serve on the Board

Over the last 20 years, community association living has exploded across the United States. In Illinois alone, there are more than 25,000 associations. Homeowners have bought into associations with the hope that the experience will be less demanding than owning a single-family home and more enjoyable since there are other homeowners living closely together within the same community.

Unfortunately, more often than not, homeowners buy into community associations without realizing that there are duties and obligations as a homeowner that are amplified for those serving on the board.

Shortage of Volunteers

As a result of the unexpected time commitment required to serve on the board, there are frequently shortages of homeowners willing to serve as volunteer board members. In relation to this shortage, community associations around the United States struggle to find volunteers to serve on the board. Whether there is a 10 unit building with only 3 board of directors or a 100 unit building with a 7-person board, associations sometimes do not reach quorum to have an election or don't have enough volunteers to fill the open positions.

Causes of Volunteer Shortage

In some cases, the governing documents are at fault. For example, there is one particular association that I know with only 13 units that requires a 7-person board according to their governing documents. How realistic is this? This is the fault of the developer who hired an attorney who used a boiler plate template from a larger building and did not bother to review the details of the document and just reused it for a smaller building.

In other circumstances, homeowners are reticent to volunteer due to their experience attending board meetings that were not well run and left a poor lasting impression upon them. Other causes include apathy or a lack of understanding of how important serving on your board can be. Regardless of the reasons for a shortage of homeowners, there are actually many strong reasons as to why homeowners should volunteer for the board.

10 Reasons to Serve on Your Board:

10. Keep abreast with association issues. It is important to know what is going on around the association so you can determine what is important to address and what are the priorities. The more knowledgeable you are, the more effective you are as a board member and decision maker. This applies to other areas in life such as your career and personal life.

9. Develop relationships with the other homeowners. Contrary to popular belief, it is better to get to know the homeowners within your community than to avoid them. Eventually, you will need other people to serve on the board and you will need others to support your vision for the association.

8. Refine your decision-making skills. Believe it or not, serving on the board can enhance your decision-making skills and it is an excellent opportunity to do so. We all need to make decisions in life and if you have difficulty pulling the trigger when it comes to decision making, then jump on the board and use the opportunity to get out of your comfort zone.

7. Leave a legacy. Imagine serving on the board and creating an amazing well-run community that is well funded, well maintained and has wonderful curb appeal. This is certainly possible if you get on the board and make it happen. And once you sell your unit, you will be very happy you invested the effort as your ROI will be well worth the time you spent.

6. Develop and enhance leadership skills. Serving on the board is NOT a thankless job. It is an opportunity to refine your leadership skills. All employers are looking for employees with some level of leadership skills and the better your leadership skills, the more valuable you will become for your company. Even for those who are self-employed have opportunities to become a better leader by volunteering for the board.

5. Learn to work as a team. There is no "I" in teamwork and it is important that the board work together as a team. Whether you work for a company or are self-employed, you will need to work with others and volunteering for the board is a great way to enhance teamwork skills.

4. Learn the art of displeasing. This is one of the more significant challenges of serving on the board for some people. For example, some board members have a really difficult time raising assessments because they think the other homeowners will be upset. In actuality, the consequence of not raising assessments is worse. The association then cannot pay for necessary repairs and will have to steeply raise assessments down the road or will almost certainly have to pass a special assessment. Get on the board and learn to displease with ease and you will reap the benefits of this important skill set.

3. Directly influence the resale value of your investment. Everyone wants to reap a financial reward for their investment. By serving on the board, you have a direct say and impact on your ROI.

2. Enhance your ability to influence others. Don't you want to learn how to better influence others? Serving on the board is a great way to learn this skill set especially if you want to get something done that is not a popular idea. For example, let us say you want to redecorate the interior lobby of the main entrance and it is not popular with the other board members. Do you stop and give up? No, you find a way to influence the other board members and find a way to convince them of all the wonderful benefits of enhancing the lobby through a redesign.

1. Determine who is the management company. This is a huge reason and a reason alone to serve on the board. The difference in the quality of management services from one company to the next is often times very large. And if you care enough about your assessments and how they are spent, then this is a great reason to volunteer and make a difference on who is the associations' management company.

SUMMARY

Many people who buy into an association do not attend board meetings and don't ever serve on the board for various reasons. However, the reasons to serve on the board far outweigh the reasons to not serve on the board when you really get down to it. Make a difference, enhance your professional skills, and serve on the board. You will reap the rewards and gain from it in more ways than one. ✠

by Nik Clark – Superior Reserve Engineering & Consulting

Pitfalls of the *"We'll Just Write a Check"* Method of Reserve Planning

"Our unit owners can afford to just 'write a check' as needed for future capital projects. They understand their obligation but they'd rather keep their money personally invested until the association undertakes the projects."

If everyone was going to live in a unit in perpetuity, and they understood and accepted the potential for large unexpected special assessments, this would be a viable option. With that said this is something that "sounds good in theory, but doesn't work in practice". No one stays in a unit forever.

First, my bias... I am the owner of an engineering/consulting firm that specializes in reserve studies as well as transition defect studies and engineering evaluations. I've spoken to thousands of association boards and hundreds of trade conference audiences. If I had a dollar for every time I have heard the above excuse (over the past 16 years of my career) for not conducting a reserve study OR choosing not to fund reserves it would pay for your next special assessment.

What About When A Resident Moves In or Out?

So let's say everyone in an association is well funded and wants to just "write a check". OK... What about when they move out?

Are they going to write a check, upon the sale of a unit to cover the unfunded reserve expenditures coming up? (not likely... "Hey... I'm out of here... but oh... the roof is coming up... Here's a check for $5,000... See ya!" (if this happens please let me know. I'll wait)

Is a new unit owner going to shrug and say "well I can afford it" when you ask for $10k for an assessment 1 year after they move in? For a roof that wore out over 20 years? "Welcome to the neighborhood!" Financially sound real estate buyers didn't get financially sound throwing around money to cover the poor financial planning of others.

The counter argument would be to say "Oh... well a potential buyer would take upcoming assessments into consideration in their purchase price." But how would they do this? How would they know how much less to offer. How would they know what their units portion of an upcoming special assessment would be? Only a (quality) reserve study can tell you how under- funded a reserve fund is. Is a seller going to want to spend thousands of dollars for a reserve study that documents for a potential buyer just how underfunded their reserve fund is? Stated differently. Is a seller going to spend money on something that will reduce their sale price and/or make it more difficult to sell their unit? Is any buyer going to commission a reserve study (for thousands of dollars) so they can make an appropriate offer to purchase in consideration of upcoming special assessments? Remember, it's not enough just to have their home

COVID-19 STIMULUS
FIRE SPRINKLER TAX INCENTIVES

New tax law allows fire sprinkler system installation and retrofits to be fully tax deductible.

The May 2020 Federal COVID-19 legislation has strengthened Small Business Section 179 expensing to include both new fire sprinkler installation and building retrofits. In the past, the cost of a fire sprinkler system upgrade was tax deductible over a 39-year depreciation schedule. With Section 179 expensing, these costs can now be fully expensed in the same year. In the past, small businesses were only able to fully deduct small equipment purchases like computers, and light duty vehicles that were used more than 50% of the time for business only use.

Section 179 expensing does not allow for the full deduction of sprinkler retrofits from converting commercial structures into residential buildings, but this permanant change in the provision can be utilized for any crictical occupancies, including entertainment occupancies.

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For more info:

The time is now to upgrade your building's fire safety with a fire sprinkler system or a sprinkler retrofit.

Under the new Section 179 guidelines, the one year deduction period phases out after 2022. Any new sprinkler system or retrofit completed between September 27, 2017 and December 31, 2022 will be able to be fully expensed in one year. After 2022, the allowed deduction percentage is as follows:
2023: 80%
2024: 60%
2025: 40%
2026: 20%
2027 and after: The depreciation schedule becomes permanently set at 15 years.

Expense amount increased.

In the past, the annual cap on purchases was set at $500,000 per year. With the addition of fire protection upgrades in Section 179, congress also increased the annual limit to $1 million.

Contact your tax expert for more information.

MUNICIPAL BENEFITS OF FIRE SPRINKLERS:

- Businesses can move into different unprotected occupant spaces and get the fire sprinkler protection required under the code at full cost recovery!
- No need for code variances for political reasons.
- Your community and businesses will be much fire safer for your citizens, business owners and first responders.

inspector opine on the individual unit or S.W.A.G. a guess on how underfunded reserves are. Beyond the unit there are roads, site elements, perhaps amenities (pool, clubhouse?) A home inspector isn't qualified to assess reserve balances for all that. And a buyer might pay for a home inspection but they aren't going to spring thousands of dollars for a reserve analysis of the whole property for a unit they aren't sure they would want to purchase. They will likely just move along to the next showing on their real estate agent's itinerary.

Disclosure and Non-Disclosure

If your association already has a reserve study that identifies the degree of underfunding, that is material information you would need to disclose to every potential buyer. Real Estate agents are going to love that disclosure packet "So here we have this gorgeous unit. It's pricey... But isn't it beautiful... Oh by the way, this association has no reserve funds, so here's the reserve study showing the potential for countless special assessments... So do you want to offer their list price?"

Non-disclosure is not an option either. Being aware of underfunded reserves and not disclosing that to a buyer exposes the seller to a high risk of legal liability. Real Estate isn't 'buyer beware' like a used car. You are required by law to disclose material information. And it's easy to prove a seller was aware of under-funded reserves. When the buyer of your unit gets hit with a surprise special assessment have your attorney on speed dial. It will be easy to document in the discovery process of a lawsuit that an association had a reserve study, it was provided to unit owners, and drastically under-funded reserves were not disclosed to the buyer. Now you can get out your checkbook for the amount you didn't contribute to the reserve fund AND the attorney fees of your unit's buyer (along with your own attorney fees).

Some Appear Wealthy as they Live on the Edge of Solvency

There are other pitfalls of the "our unit owners just write a check" method. Having artificially low monthly assessments that do not include monies for an appropriately funded reserve misrepresent the true cost to live in a condominium. You may think everyone in an association is wealthy enough to just write unexpected checks for unknown amounts of money. Are they? Some people who appear wealthy are living on the edge of solvency. You may think that every buyer of a unit (even a very high end unit) would be well funded enough to just "write a check" but the propensity of people who desire "nice things" to purchase something they have to stretch to afford happens all the time. Do you want buyers who want to get into an exclusive condo community so bad they extended themselves to get a unit for which they could afford the mortgage, but not the special assessments?

Run Your Association As a Business

Realistically you are going to need a reserve study either way. But if you are going to have a reserve study done, you have identified the capital expenditures that ARE looming. From an accounting standpoint, the future expenditures are already being incurred. Run your association like a business. If a public company didn't reflect depreciation on their balance sheet they'd be falsifying financial documents. They'd be over-valuing the business by having asset values that aren't accurate. If the useful life of your associations roof is 90% gone, it only makes good business sense that your reserve fund should already contain funds to cover value of the useful life that has already been consumed. Anything less is bad business practice, misstates the value of the assets (units) and is a disservice to current and future association members. (in my professional opinion based on experience and observation)

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