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HOT TOPICS, TRENDS & ISSUES FOR COMMUNITY ASSOCIATIONS

STATE of the INDUSTRY REPORT

FEATURES

LESSONS FOR COMMUNITY ASSOCIATIONS GOING FORWARD

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STATE of the INDUSTRY REPORT • 2022

HOT TOPICS, TRENDS & ISSUES FOR COMMUNITY ASSOCIATIONS

by Pamela Dittmer McKuen

Hot Topics, Trends and Issues for Community Associations

The 2022 Condo Lifestyles State-of-the-Industry brought together association professionals, homeowners and volunteers for an enlightening program of education, networking and camaraderie.

Now in its 27th year, counting the 2020 digital version, State-of-the-Industry is the signature production of MCD Media, publisher of Condo Lifestyles and Chicagoland Buildings & Environments magazines and websites.

"Civility" was the theme for the day, or rather the "incivility" that is running rampant. The issue drew much interest and input from both the presenters and attendees.

"One of the main topics we're going to talk about is community civility, or practically speaking, how do we deal with people who are so rude these days?" said Michael C. Davids, president and founder of MCD Media. "Incivility is indirectly related to Covid-19 as we see some people have used the pandemic as an excuse for bad behavior. It's not fun for anyone on the front lines."

Other topics addressed were inflation, reserve studies, property taxes, structural evaluations, capital projects, community association banking trends and decarbonization.

The recent face-to-face gathering took place at the historic Chicago Cultural Center on Thursday, November 17. Attendees were greeted with information tables that provided expertise on topics such as fire protection and life safety, disaster restoration, exterior building restoration and maintenance, association law, window and door replacement, and more.

After a catered lunch buffet, the welcome message and opening remarks were delivered by Davids. Of particular note was the change in date for the 2022 State-of-the-Industry from the usual second week in December.

"We're glad to have the same great turnout we've had in years past since we moved forward three weeks into November," he said. "We couldn't be 100 percent sure, but we're happy it worked out and that you're all here."

"Regardless of the season, it's always important to take time to exchange ideas, share information and help each other the best we can," he continued. "As we all know, there are plenty of issues that are facing us as an

↗ *Shown here is moderator Brian Butler of FirstService Residential and our panel of experts.*

industry. MCD is pleased to be able to provide a forum for communication through our publications and events such as this."

Davids also thanked attendees, event organizers, media guests and MCD Media Advisory Board members for their support and participation. Special recognition was given to the event sponsors and presenters.

LEGAL AND LEGISLATIVE UPDATE

Association attorney Gabriella Comstock of Keough & Moody presented an update on recent legislative changes and court decisions impacting community associations.

Legislative and government issues are always an important component of State-of-the-Industry. This year, many of the hot buttons have moved on from the Covid-19 pandemic as the country appears to have learned to live with it. Of course, the coronavirus is still a major concern and continues to impact all of us.

As she reviewed the year's high points, Comstock illustrated them with the lessons she learned and how they can be implemented to create better, healthier communities in the future. Her presentation is covered elsewhere in this issue along with the full text of her handout.

PANEL DISCUSSION: HOT TOPICS, TRENDS AND CHALLENGES

Another State-of-the-Industry tradition is the panel discussion during which leading professionals offer their insights and views on the most pertinent issues facing practitioners, board members and associations. The panel was introduced by Brian Butler, senior vice president at FirstService Residential Illinois.

The 2022 panelists were: David Barnhart, vice president of condominium management at The Habitat Company; Matthew Panush, senior property tax analyst at Worsek and Vihon; Peter Power, president, senior principal and architect

at Klein and Hoffman; Adam Sanders, project engineer and team leader, Elara Engineering; Hans Kiefer, principal at Kellermeyer Godfryt Hart; Adam Kahn, association attorney at Levenfeld Pearlstein; Peter Santangelo, president at Wintrust Community Advantage, a division of Barrington Bank and Trust Company; Marshall Dickler, association attorney and senior partner at Dickler, Khan, Slowikowski and Zavell Ltd.

An edited version of the panel discussion follows:

Q: Let's start with civility. How are you guiding your boards toward constructive solutions in this challenging environment?

Adam Kahn: The approach we recommend taking is to have some empathy but also keep the big picture in mind. It's one thing to hear out someone who is maybe disappointed or frustrated, who wasn't expecting a hike in assessments or that a project is going to require a special assessment. Clear communication and listening are really important. I've seen success with frequent town hall meetings to make sure unit owners are informed and have the opportunity to ask questions and voice their concerns. But at some point you need to move forward.

It is also important for boards to set the tone of "we are going to be respectful, and we expect you to do the same."

Customarily, condominium declarations include a prohibition on nuisances and noxious and offensive conduct. The board is tasked with enforcing the governing documents. Remedies will be set forth in the association's governing documents.

Also, boards must take steps to ensure that association employees are free from workplace harassment, including harassment by third parties such as contractors and residents, or the association may face potential liability. Under new Chicago law, all employees must have an anti-harassment policy, conduct annual anti-harassment training and provide notice to employees of anti-harassment protections.

Q: On behalf of management, what is our role to play when there is a breakdown in civility, not just between board members but between the board and owners?

David Barnhart: This is a tough one, and it's gotten worse since covid. I'll bet everybody in this room would say people have completely lost it, civility is out the window, rudeness is the norm. I know several attorneys say to allow people to say anything they want in any venue they want because of their free speech rights, but there has to be some balancing act.

Sometimes there has to be some cooling off period. Sometimes meetings have to be adjourned. Sometimes we need to take a step away and walk around instead of just having things heat up terribly.

Q: Marshall, have you ever seen it this bad, and how do we bring civility back to associations?

Marshall Dickler: My focus is you put up with it lightly to run the business at hand, but when you can't put up with it any more, you actively address it. I do agree it's worse today, but we also have more tools available to us than we had 10 or 15 years ago, and we are utilizing those tools. Covid caused this anger you're talking about, but it has also given opportunities to communicate with people better than we've ever done before.

We encourage remote meetings. You get better attendance, so people can't say they don't

↗ *Michael C. Davids of MCD Media*

know what's going on. To make it happen, managers can start charging money if they have to go to more onsite meetings. Another advantage to remote meetings is you can cut off people who are unreasonable and who won't be cut off when they are in person. Ultimately, you'll be able to control the meeting.

The second thing we have done is implement fines and penalties as part of the rules. We've given boards the right to at any given time adjourn the meeting and call a special meeting for the purposes of voting on the conduct of the individual who is interfering with the board action.

Everyone says, "It's a condo association. I don't want to do it." The answer is, "All right, live with the consequences of not doing it." It's very simple. Once people understand the limits of what they can and cannot do, and if you want to exceed them, it's going to cost you money. Then they start thinking really hard about the amount of time they are going to interfere with the board action.

It's better than calling the police, which we've done. It's better than having police officers at meetings, which we've also done. We can hire off-duty police for pretty reasonable amounts of money to control the actions that go on at these meetings, and to make everybody feel a little more safe. The whole atmosphere changes when people see one uniformed officer standing there.

Just be creative in order to assure security in your particular meeting or place of business. There are businesses that have security in place all the time now. You've got to do the same thing at a condo association.

Q: On a related subject, one of the things that has come out of the Surfside condominium collapse in Florida, it wasn't just the crumbling facade that caused the disaster. There was a lot of stalemate and dysfunction within the community. Hans, are you changing the way to relay a sense of urgency to your clients?

Hans Kiefer: I'm definitely thinking about it a lot more, that's for sure. The city of Chicago has the ongoing critical facade ordinance, and in that report, they do ask for priority numbers. Does this element require action in one year, two years, five years? What is the priority? We've been doing that for quite a while, but now we're getting more questions from the buildings in terms of if their building is structurally safe. It's a different question that comes from the board and one we really haven't been asked before because of Surfside.

Butler: It's always helpful as a manager when you can bring your experts up in front of your owners and have them answer questions, and not just translate for them.

Q: Pete Power, are you seeing an uptick in boards asking for condition assessments and updated information they can bring to their owners?

Peter Power: Yes, we are seeing it. We've got offices in multiple areas of the country across the board, and there is definitely a response in relation to what happened in Surfside. They are combining requests for condition assessments and reserve studies.

I agree with the prioritization efforts. I think that it always works better to break it down into what is recommended, what is a long-term maintenance thing, and what's absolutely critical. Explain things in layman's terms, so people can understand what they are buying.

Sometimes it takes multiple meetings, the town hall type of things where you answer the questions. Repeatedly, in some cases, but ultimately you get it out there.

Q: What has changed in terms of lending to community associations in the past 12 months?

Peter Santangelo: We're seeing a lot of diving into what is critical and what needs to be done. As interest rates rise, it is obviously increasing the cost of the overall project. Due to this, boards are looking at financing for necessary work and projects that cannot be delayed. It can be more difficult to qualify for a loan where the association does not want to implement a special assessment but wants to pay from the net operating income or reserve contribution.

Especially during these uncertain economic times with rising inflation costs, supply chain issues, labor shortages and other challenges, boards need to plan ahead with their management teams. Reserve studies should look out more than five years, preferably 10 and 15 years out. Then build in a financing rate cushion above current market rates.

Q: Considering the volatility of energy prices, are you seeing higher requests for recommissioning existing boilers, heat exchanges and the like that would have a payback period?

Adam Sanders: Yes, our control division in our office has needed to grow to accommodate those commissioning requests or installing control systems where they don't currently exist. Energy costs are going to continue to drive a lot of factors, and decarbonization is going to be coming into play here a lot sooner than we all think.

(from L to R) Shown above are Condo Lifestyles Advisory Board members Tom Skweres - RealManage Illinois, David Barnhart - The Habitat Company,and Salvatore Sciacca - Chicago Property Services with Michael Davids.

Decarbonization is the effort to reduce carbon emissions from buildings whether it's new buildings or existing buildings. Cities throughout the world have already been adopting decarbonization measures. Chicago is a little late to the game, but we know it is coming. We expect the city of Chicago to release its regulations in 2023. We don't know what they will be, but the end goal is 2050 for net zero carbon emissions. Most people in the industry are anticipating something similar to New York City, which is stepped-up energy improvements.

Decarbonization is going to affect everybody in this room. It's going to start affecting reserve studies and funding. Legally, it's going to come in because some of the equipment you are replacing might be located in units.

Q: Speaking of sustainability, are you seeing increased requests for electric vehicle charging stations from unit owners?

Barnhart: I thought we would have seen a lot more movement on this over the last year, considering how many Teslas are driving around us. I think if there is another long-term spell of gasoline and fuel prices being very high, some people will bite the bullet once they know their building has the infrastructure.

Then there's the ever-moving target of ComEd rebates. It's hard to plan when to pull the trigger on a project when you are hoping to get rebates but they dry up at a moment's notice. That puts another little rub in things.

But we at most of my managed associations are talking with consultants and electrical folks about staying ahead of the curve with much of this, more than we've done in the past.

Q: Adam Kahn, as associations start to look at electric vehicle charging stations, not all buildings are created equally when it comes to infrastructure. How are you guiding your clients to prepare for that transition?

Kahn: We're trying to educate our boards as much as we can that this is coming. You may not have a request yet, but you want to look into it because it's an amenity that as units are marketed and sold, you want to be on the cutting edge. Some of our clients are debating whether we want to invest now and upgrade, but we want to get a clear picture of what this looks like for us specifically.

Find out what your building's current capacity is, so you can make informed decisions. The last thing you want to do is announce to your membership charging stations for all and turn around and find out you don't have the juice, or amperage, for that. It's going to be a giant upgrade. Make sure any installation is done by a licensed, properly insured contractor in accordance with your construction rule.

We recommend a license agreement if you are going to give someone the right to tie into common-element electricity. A handshake won't work here. Make sure you are deliberate with it. There are lots of issues, including submetering and fees. The last thing we want is for 5 or 10 years from now for someone to come to the board and say, "Hey, I've had this charging station, there's no paper trail or approval for it, I'm about to sell my unit and my parking space with it. By the way, my buyer wants it. What the heck do we do?"

Q: Matt, what's going on in terms of taxes and home value increases?

Matthew Panush: Very quickly, let me touch on electric vehicle charging stations. They have nothing to do with property taxes. I've taken a dozen calls from owners and property managers saying, "We just put these chargers in? What does that mean for our taxes?" Good for you, but it has nothing to do with your property assessment, although it might be something your association is assessing you on.

It was very odd in 2020, as residential real estate was going up by 20, 30, 40 percent, assessed values were cut by 10 percent. In 2021, when properties within city limits were assessed, I think they tried to recapture some of that value that was artificially lowered for tax year 2020. Appeals were not as successful.

The assessing officials understand a typical neighborhood is a house next to a house next to a house. What they don't understand is that a condominium is a vertical neighborhood. It happens to be houses stacked on top of one another. If you have a typical residential home anywhere, there are so many ways you can approach an appeal. Most commonly used is a uniformity approach--how many similar properties are around that home, and this one is being taxed at $8 a square foot while I'm being taxed at $12 a square foot.

That uniformity approach does not happen with condominiums. They use recent sales within that building and come up with one big old market value. Then they divide that amount by each person's individual percentage of interest. There's no accounting for the overly improved units. There should be a market adjustment for these sales.

We recognize the inconsistencies, and we are trying to correct them. If we have to litigate, which would be unprecedented, we will. ■

The Community Association Civility Pledge is an initiative from the Community Associations Institute designed to promote harmony, community, responsible citizenship and effective leadership. Associations are invited to download, distribute and adopt the pledge for their communities at www.caionline.org.

(Note: The full text of Comstock's handout, "Legislative and Case Law Update for the 2022 Condo Lifestyles State-of-the-Industry Seminar," is reprinted elsewhere in this issue.)

by Pamela Dittmer McKuen

Lessons For Community Associations Going Forward

Association attorney Gabriella Comstock of Keough & Moody, P.C., delivered the Community Association Legal and Case Law Update at the 2022 Condo Lifestyles State-of-the-Industry luncheon seminar on November 17.

The Legal Update each year covers recent activity and judgements from legislators and courtrooms that impact community associations. This past year, 2022, was especially enlightening as it provided myriad teaching moments for boards and those who manage them.

Significant legislation covered document requests and fees charged to provide them. Court cases looked at a variety of issues including free speech, settlement agreements and adoption of assessments.

Association attorney Gabriella Comstock provided highlights, along with the lessons she learned that can help associations run themselves better and avoid costly mistakes.

DOCUMENT CHANGES FOR ICPA AND CICAA

Both the Illinois Condominium Property Act and the Common Interest Community Association Act were amended to allow members to inspect, examine and copy the association's reserve study.

"The statute doesn't require an association to get a reserve study," Comstock said. "It's just if the member makes the request for the reserve study, the association has to provide it."

Possibly the most controversial of the year's legislation involves the fees charged for providing documents to prospective buyers as outlined in Section 22.1 of the Illinois Condominium Property Act.

The amended statute requires associations to respond to written requests within 10 business days instead of the previous 30 days. Although associations can receive a fee to cover direct out-of-pocket expenses to provide the requested documents, that fee cannot exceed $375. After the first year, that amount can be increased or decreased by a percentage equal to the percentage change in the Consumer Price Index. If rush service is required, meaning within 72 hours, an additional $100 can be charged.

"You might remember last year at this time talking about a court case that came down that looked at some of the fees a management company was seeking to collect, and the appellate court said, 'You ask for too much,'" Comstock said. "But let's remember, Section 22.1 already says you can only recover reasonable out-of-pocket expenses. This was more than the out-of-pocket expenses in that case."

At first glance, the fee limitations appear


Gabriella Comstock - Keogh & Moody, P.C.

daunting, considering how lender queries for information and documents have intensified in recent years. That concern is real, but the amended Section 22.1 only applies to documents you are required to give a buyer.

"It says nothing about the information you have to give at closing," Comstock said. "It says nothing about answering the questions for the lender. It says nothing about answering all the questions from the attorneys who are representing the buyers and sellers."

2022 STATE of the INDUSTRY LEGAL UPDATE

Lesson #1: Charge Reasonable Fees

Segregate or make a distinction between what you are doing for Section 22.1 compliance and what you are doing for closing requirements. They are not the same thing. If you charge a fee for closing information (which the amended statute does not address), make sure you are asking for a reasonable fee that correlates to what you are doing.

PRIOR AGREEMENT HOLDS UP IN COURT

The homeowner and association in Spiegel v. 1618 Sheridan Road Condominium Association were involved in on-and-off litigation for more than 20 years. When the association did not open the outdoor swimming pool one year, the upset homeowner retaliated by posting negative signs about the board on his unit windows and around his building.

Plaintiff and defendant entered into litigation and came to a settlement: The association would open the pool, and the homeowner would stop posting. Occasionally the homeowner started posting again, and the association sent him notices he was in violation of the settlement agreement. He stopped, but did it again.

During the COVID-19 lockdown, the association did not open the swimming pool, and the homeowner stepped up his anti-board campaign. Both sides filed petitions to enforce the settlement agreement.

That's when the plaintiff argued that the settlement agreement violated his First Amendment rights. But the appellate court said he voluntarily surrendered those rights when he entered into the agreement.

Under ordinary circumstances, the court could not order him to stop his negative campaign--but he had already agreed to do so. The court could and did uphold that agreement.

"Why do I like this case?" Comstock posed. "Because that difficult owner is not going away. The reaction is often, 'Let's sue him,' but this court reminds us that you're not going to get something more than what you can work out with the owner. The court can only do so much."

Lesson #2: Try To Work It Out Yourself

If an association is in dispute with an owner, it can usually get better results if they work out an agreement between themselves rather than go to court.

SAY SOMETHING NICE

In the case of Kiss v. Old Renwick Trail Homeowners Association, the plaintiff was an attorney and a former manager of the association. The association relieved him of his duties. At a later open board meeting, board members made negative comments about him, his alcohol consumption and level of competence. The meeting was recorded and posted on both the association website and YouTube.

The former manager filed a lawsuit alleging defamation and false light invasion of privacy. Many legal maneuvers later, the appellate court said that because the statements at issue were made by the board during a board meeting, those statements related to the former manager's performance of his duties to the association, and hence were protected by a "qualified privilege." Essentially, the association as an employer was reviewing the conduct of an employee.

"This association got lucky with qualified privilege," Comstock said. "I still don't think anyone in this room would say they were right to talk like this about an employee at an open meeting."

Lesson #3: Take A Break

Board members must watch what they say at a meeting, and they need to know when to cut someone off. There is nothing wrong with saying, "We need to take a break," when something gets really off track.

Lesson #4: Don't Post Your Meetings

Yes, you should have open meetings. Yes, you should give proper meeting notice. Yes, you should act properly at a meeting. No, you should not record it. No, you should not post it on social media.

THAT'S THE WAY IT'S DONE

When Morgan's Orchard Lake Homeowners Association sought to collect unpaid assessments and a possession order from a non-paying homeowner, and won, the defendant filed a motion to vacate the judgment. He claimed the association, a common interest community, should have allowed the owners to vote to approve the assessments they were trying to collect, as required by the declaration. The court granted his motion.

On appeal, the association argued the assessments sought were validly approved when it approved the annual budget, and they relied on the terms of the Common Interest Community Association Act, which empowers the board to determine the amount of assessments to be collected. The court disagreed, saying the declaration required that assessments be determined by a unit owner vote at a properly noticed meeting called for that purpose. The board did not do that.

When the plaintiff argued there was a conflict between CICAA and the declaration, the court disagreed. CICAA does not alter the voting members' authority. The delinquent homeowner won.

"I know there was a lot of concern when this case came down, but this was a very unique declaration," Comstock said. "I would venture that most of you attorneys have only seen the provision on old documents from years ago. This case is a good reminder to read all the documents."

Lesson #5: Consider the Gray Areas

Courts today are eager to make sure associations, through their boards, do not exert any more power or control than they should. Boards and their professionals can sometimes lose sight of what the unit owners' rights might really be. Sometimes it's not as black and white as it appears. ✠

by **Salvatore Sciacca – Chicago Property Services**

Plan for Capital Improvements and Avoid Deferred Maintenance Disasters

A Primer for Community Association Board Members and Property Management Professionals

One of the most typical scenarios that board members face while serving on the board is the issue of deferred maintenance and capital repairs. Since capital repairs often cost large sums of money, it is understandable why many board members are more willing to defer the repairs versus spending the large amounts of money necessary to make the proper repairs.

By deferring the maintenance and repairs of capital projects, the board members are creating larger problems for the future board members and the association. The costs of these projects typically go up every year and in some cases the costs go up exponentially as is typically the case with tuckpointing and masonry repairs.

Below are the best ways to address capital projects whether they are deferred or not and avoid causing larger future problems for the association.

1. **Get a reserve study/capital plan in place.** The first step is always to get a clearer picture of the types of projects that need to take place and how much they will cost. If the association has the budget for it, it is best to obtain a reserve study. For associations that can't afford a reserve study, the board should get a capital plan put together.

2. **Identify an action plan.** Once the board has the information at hand, the board and/or capital plan committee should sit down and create a plan of action. The plan should identify which projects will be addressed short term (within the next 12-24 months) and those that can be addressed in the long term. The reserve study and capital plan should provide that information. However, the board ultimately decides on the prioritization of the capital projects as well as when they want the projects to be completed.

3. **Put in Place a Funding Plan.** This is probably the most difficult part of the process. How will the association pay for the capital projects? Funding is generally

the reason why capital projects are deferred. However, the fact of the matter is that deferring the capital projects will only make matters worse and it never makes the situation better. So, the best scenario is for the board members to roll up their sleeves and decide how to pay for the projects. The funds will typically come from reserves, a special assessment, a loan/special assessment or a combination of these funding sources.

4. **Special Assessment or Loan/Special Assessment.** Should the association raise the funds through a straight special assessment, or should the association obtain a loan and approve a special assessment? The answer depends on how quickly the projects need to take place and how fast the funds need to be available to pay for the projects. For example, if the roof of a 15- unit association is in extremely bad shape (the roof needs to be replaced within 12 months) and the replacement cost is $200,000, the answer is to get a bank loan.

   This will allow the association to obtain the funds quickly and have the roof replaced before there is more damage to the upper floor units. In this scenario, the association could likely have the roof replaced within 6 months of starting the process. The alternative would be to pass a special assessment that could take several years to collect and in this scenario the damage to upper floor units would end up costing the association much more money and create many more headaches.

5. **Discuss the Options in a Townhall Meeting.** Once the board has come up with a few scenarios, the board should call a "townhall" or community wide meeting and discuss this situation with all the homeowners. It is obviously extremely important for the board to present the information to the homeowners and get their feedback and opinions. Ultimately, the board makes the final decision but politically speaking it is best for the board to attempt to gain some consensus among all residents.

6. **Approve the Funding Plans at a Board Meeting.** The next step in the process is for the board to approve the funding plans whether it is passing a special assessment or obtaining a loan and passing a special assessment.

7. **Vet and Hire the Qualified Vendors.** This is one of the most critical steps in the process of undertaking capital improvements and has the highest risk of failure. Should the board hire the least expensive vendor in an effort to save money? Should the board hire one of the vendors who is related to one of the homeowners? Should the board hire a vendor that the management company recommends or should the board shop independently of the management company's recommendations? Regardless of the approach, the only vendors that should be hired are the ones that will provide the best value for the best price that have a proven reputation.

8. **Assign a Project Manager.** This is a vital step in the process that is often overlooked and creates big problems once the project(s) is underway. Make sure a qualified person is identified to act as the project manager and communicates between the vendors, the board and the homeowners. This person should also ensure that the project(s) is completed properly and should have the ability to identify and punch list items that need to be resolved by the vendor(s) before they are issued final payments.

9. **Start and Complete the Projects.** The time has now come for the capital project(s) to take place. The funding is in place. The project manager has been identified and the vendors are ready to perform the work. Make sure the homeowners and board members are kept up to date with the progress of the project(s) and let them know that their feedback is important.

10. **Don't Defer Capital Planning and Capital Funding Going Forward.** The best way to avoid deferred maintenance and capital improvement headaches is to make sure that the association strictly follows a reserve study or a capital plan. One way to ensure this is to add a capital planning line item to every board meeting agenda and discuss these issues during each board meeting.

SUMMARY

Capital planning and capital funding is not an easy task. These types of projects are typically very expensive, and some board members are uneasy with the duties involved in passing special assessments, raising the assessments or approving loans to fund the capital projects. Unfortunately, avoiding the obligations necessary to address capital improvements in a timely manner creates future problems that often make the situation much worse for the homeowners and the association. ■

by Julie Jacobson - KSN

Best Practices for Planning and Evaluating Your Condo and HOA Budget

A thriving community starts with a thoughtfully prepared budget. Financial planning helps ensure a stable future for any condominium, homeowner (HOA), or townhome association. Accordingly, board members must take their financial responsibilities seriously.

Generally, a budget should include the association's estimated annual revenue, expenses, and reserve fund contributions. Board members, community leaders, and property managers should also refer to the governing documents to make sure they are developing the budget in accordance with all association requirements.

Below are four items to consider when planning your association's annual budget.

Budget Planning Process

The budget planning process is useful for reviewing an association's goals and priorities. The board may consider scheduling a planning session to address key budget items, including:

- **Timing -** Planning early is vital. While it's never too early to evaluate your annual budget, it's common to start planning at the end of summer.
- **Establish goals –** Planning to remodel a clubhouse? Need to replace an elevator? Is a major landscaping project long overdue? Ensure the budget properly reflects the community's needs.
- **Look to the past -** Reviewing past budgets may assist in forecasting upcoming expenses and funding gaps.
- **Assessments –** Are current level of assessments adequate? Is it time to reevaluate based on budgetary concerns? Even if the assessment amount remains unchanged, budgets are typically adopted by the board on an annual basis.
- **Reserves –** Along with upcoming expenses and projects, the budget should also address the association's reserves. Adequate reserve funding (supported by a reserve study) can be integral in the event of an emergency or unexpected costs.

Evaluate Expenses

A proper budget should include operational expenses, reserve funding, and projected maintenance. When evaluating an association's expenses, you will also need to account for inflation, market trends, increased cost of labor, and other financial factors.

Typical association expenses and best practices include:

- **Utilities –** Consider increasing funding for these line items annually as power, water, and other utilities are subject to price changes.
- **Trash and garbage disposal –** Along with regular waste management services, boards should also evaluate recycling options and large item disposal (ex. extra dumpster for furniture and boxes left after an owner moves in or out).
- **Grounds and building maintenance –** This may include lawn care, landscaping services, and snow removal services.
- **Security –** This may include cameras, motion sensors, gates, card readers to limit access, and employing security personnel.
- **Maintenance and operation of recreational and other facilities** (ex. fitness center, pool)
- **Heating fuels**
- **Janitorial services**
- **Building insurance**
- **Elevator maintenance**
- **Sidewalk and street maintenance –** This may include fixing potholes, replacing broken signage, and addressing accessibility issues.
- **Property management**
- **Accounting and bookkeeping services**
- **Legal services**
- **Reserve funds for improvements –** This may include renovating common areas, replacing appliances with energy-efficient models, or installing solar panels.
- **Reserves for unexpected repair work –** This may include elevator breakdowns, pool pump malfunction, frozen pipes, storm damage, or fallen tree removal.
- **Reserves for replacement and upkeep of common area and facilities –** This may include painting, replacing roof tiles, and maintaining common area fencing.

Notice and Budget Approval

Unit owners pay assessments to pay for the association's expenses and amenities. Accordingly, they have a right to review the proposed budget prior to approval.

The board must send notice to all unit owners informing them of an upcoming budget meeting. A copy of the proposed budget should be sent to all unit owners prior to the meeting.

There may be an option to include the budget with a board meeting notice if it falls within the correct timeline. Depending on your association, the exact number of days a notice must be sent prior to the meeting varies.

For example, the Illinois Condominium Property Act (ICPA) outlines a specific number of days to provide proper notice. Some Illinois homeowner associations (HOAs) follow notice requirements outlined in the Common Interest Community Association Act (CICAA).

It's critical to consult with your association's attorney to ensure the board has provided unit owners with proper meeting notice and budget distribution.

Once homeowners have been properly notified of the budget approval meeting and have been provided a copy of the proposed budget, the board can move forward the budget approval meeting.

While notice of a budget approval meeting is sent to all unit owners, only board members vote on the budget. To approve the budget, only a simple board majority is required.

Conclusion

No one wants to live in an association with poor financial planning. Proactive and proper budgeting avoids burdening residents with preventable financial concerns while affording new improvements for the community.

INDUSTRY HAPPENINGS

ABOMA

The Apartment Building Owners and Managers Association of Illinois held their 85th annual meeting and holiday party on December 2, 2023 and elected as Officers: President - **Dean Lerner**, Sudler Property Management, 1st Vice President – **Jaime Sartin,** Community Specialists, 2nd Vice President – **Timothy Kramer,** Draper and Kramer, Inc., 3rd Vice president -**Shruti Kumar,** The Habitat Company, Treasurer, **John Bieg,** Draper and Kramer, and Secretary, **Robert Wiggs,** ABOMA.

Elected to a 3 Year Term each at the meeting are: **John Bieg, Gene Gaudio** - Draper and Kramer, Incorporated., **Robert Graf** - Sudler Property Management, **Shruti Kumar** - The Habitat Company, **Asa Sherwood** - FirstService Residential, **Tairre Sutton** - Tairre Management Services, Inc and **Douglas Woodwroth.**

For more information visit www.aboma.com

↗ *Judy Rowe of Community Specialists and ABOMA Director*

↗ *Dean Lerner of Sudler Property Management and President of ABOMA*

↗ *Shown here (from L to R) are several ABOMA Directors: Tairre Dever-Sutton -Tairre Management Services, Judy Rowe and Jaime Sartin - Community Specialists, Christine Friend, and Asa Sherwood - FirstService Residential.*

MCD Pool Party featuring Condolympics

The MCD Pool Party featuring Condolympics will be held on March 10, 2023 at the Pyramid Club in Addison. Join over 300 attendees that are involved in the community association industry for a fun filled afternoon that features industry networking, a food buffet, games,and special raffles that benefit Special Olympics Illinois. Last year's fundraising challenge was won by Property Specialists, Inc. with over $3,000 in donations collected. For more information visit www.condolifestyles.net or call 630-932-5551.

You can view more event photos at Facebook/MCD Media.

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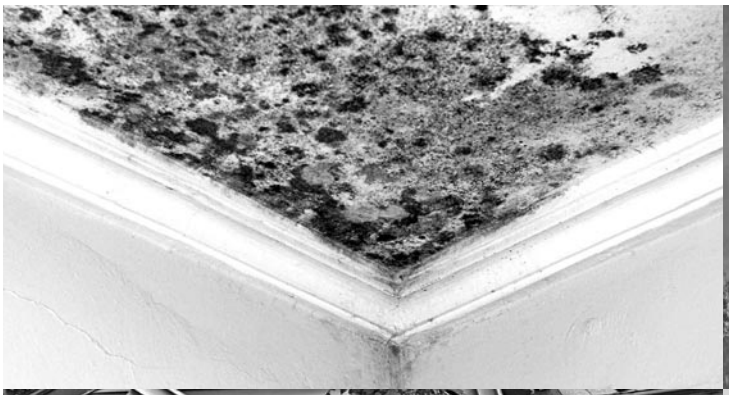

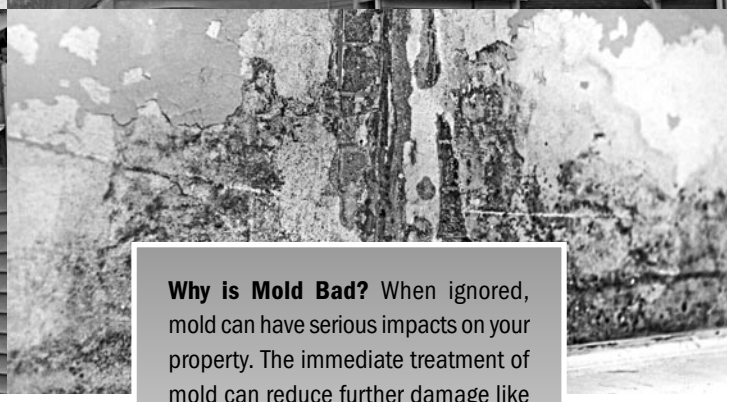

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Condo Lifestyles attempts to provide its readership with a wide range of information on community associations, and when appropriate, differing opinions on community association issues.

From the Editor

↗ *Mike Davids*

We had some early cold snaps to start the winter season and had snow and bitter cold for the Christmas holiday that was quickly melted by a warm up that extended into the new year. In addition to Covid concerns, many of us have had to deal with a nasty cold or flu bug as well as the RSV virus that has mainly affected young children. Most of us have also felt the pain of higher costs due to high inflation, rising interest rates and other economic conditions. Hopefully we will see some relief from all these challenges in 2023.

Our cover story is a report on our annual "Condo Lifestyles State of the Industry" (SOI) program held in November of 2022 at The Chicago Cultural Center. Attorney Gabriella Comstock gave a legal update presentation for attendees. An expert panel consisting of attorneys, architect/engineers, property managers, a banker and a property tax specialist shared their perspectives on current hot topics such as community civility, reserve & property condition studies, funding & financing for capital projects, property taxes, EV charging stations and decarbonization at the SOI event as well. Our cover story features the highlights of the information shared by our expert panel at the SOI program.

Our second story provides an overview and summary presented by Ms. Comstock of new laws and several court cases that directly impact community associations. We have included her summary of all the recent legislation and court cases that you should be aware of as a separate article in this issue (some of which were not discussed at the SOI program). Additional coverage of our annual SOI event is also featured in this edition including photo highlights. You can also view all the event photos from this event at Facebook.com/mcd media.

An article in our board Basic column inside this edition is on successful planning for capital reserve projects and another article discusses best practices for planning and evaluating your condo and HOA budget. Our regular Industry Happenings column also appears in this edition as is customary.

MCD Pool Party to feature Condolympics Games

Our annual Condolympics event is planned for March 10, 2023 at The Pyramid Club in Addison. Tournaments will be held for 8-ball (billiards) and darts. Other events for Condolympics competition will also be held at the MCD Pool Party. The Condo Lifestyles Condolympics donations will benefit Special Olympics.

Other upcoming MCD special events include our golf & bocce outing, which will be held on July 21 at Eaglewood Resort in Itasca and our Meet Me at Rivers Casino event on August 31. Of course, we are monitoring government guidance and restrictions due to Covid-19 and will make any adjustments needed as the events get closer. We will provide more information on these events as more details are available via email and at www.condolifestyles.net.

Special thanks to the firms, associations and groups that are subscribers and/or Authorized Distributors of Condo Lifestyles. Those of you who are not current subscribers can obtain subscription information on our website www.condolifestyles.net or by contacting our office.

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 failure, please call our office at 630-932-5551 or send us an e-mail (mdavids@condolifestyles.net). ✠

Warm Regards,
Mike
Michael C. Davids, Editor & Publisher

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LEGISLATIVE & CASE LAW UPDATE

LEGISLATIVE UPDATE

Following are Amendments to The Illinois Condominium Property Act ("Condominium Act") and The Common Interest Community Association Act ("CICAA"):

765 ILCS 160/1-90 & 765 ILCS 605/35:

Compliance with the Condominium and Common Interest Community Ombudsperson Act

Both the Condominium Act and CICAA contain provisions which require every condominium or common interest community association to comply with the Condominium and Common Interest Community Ombudsperson Act. Both Acts were amended to provide that the relevant Section requiring compliance with the Condominium and Common Interest Community Ombudsperson Act will be repealed as of January 1, 2024, instead of July 1, 2022. Hence, all relevant associations must comply with the Condominium and Common Interest Community Ombudsperson Act through December 31, 2023.

These amendments went into effect May 27, 2022.

225 ILCS 427/10:

Definition of Licensee

This Section was amended to provide that a "Licensee" means any person licensed under the Community Association Management Licensing Act. ("Licensee" previously was defined to mean any community association manager or a community association management firm.)

This amendment went into effect May 27, 2022.

765 ILCS 160/19 and 765 ILCS 160/1-30:

Reserve Study

Both the Condominium Act and CICAA were amended to provide that a member has the right to inspect, examine and copy the association's reserve study, which shall be kept and maintained within the association's books and records. Please note that this legislation does not mandate that reserve studies be obtained by an association.

These amendments went into effect May 27, 2022.

735 ILCS 605/22.1:

Closing Disclosure Requirements & Fee Limitations

Section 22.1(b) of the Condominium Act was amended to provide that when an association receives a request to make documents specified in Section 22.1 available for inspection to a prospective purchaser, the association must respond to the request in writing within ten (10) business days, instead of within thirty (30) days. This legislation also amended Section 22.1(c) to provide that an association can receive a fee to provide such requested documents, but the fee, which is meant to cover the direct out-of-pocket expenses of the association, cannot exceed $375.00. Section 22.1(c) also provides that beginning one (1) year after the effective date of this new language, the allowable fee may be increased or decreased by a percentage equal to the percentage change in the consumer price index during the preceding 12-month calendar year. The amendment further provides that the association may charge an additional $100.00 if a rush service is requested. "Rush service," per this Section, means within seventy-two (72) hours.

These amendments are effective as of January 1, 2023.

Following are Amendments to the Community Association Manager Licensing and Disciplinary Act:

225 ILCS 427/25:

Community Association Manager Licensing and Disciplinary Board

Changes were made to this Section related to the Community Association Manager Licensing and Disciplinary Board ("Board") to make it clear that a vacancy on the Board does not prevent a quorum of the Board from exercising all of its duties. It also addresses those expenses for which a member of the Board may be reimbursed. Language was also added to provide that a member of the Board who acts in good faith in his capacity as a member of the Board shall be immune from suit based upon any disciplinary proceeding or acts.

This amendment went into effect May 27, 2022.

225 ILCS 427/55:

Certificates of Insurance

This Section was amended to require the community association management company to provide a current certificate of fidelity insurance and a certificate of general liability and errors and omissions insurance to the community association for which it manages within ten (10) days of such request by the association. Language was also deleted from this Section which stated the funds for each community association shall not be commingled within the community association management firm's funds.

This amendment went into effect May 27, 2022.

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227 ILCS 427/60:

Non-Substantive Changes

Grammatical, non-substantive changes were made to this Section.

These amendments went into effect May 27, 2022.

227 ILCS 427/65:

Division of Real Estate General Fund

This Section was amended to eliminate the Community Association Manager Licensing and Disciplinary Fund. It provides that any fees received by the Illinois Department of Financial and Professional Regulation will be deposited in the Division of Real Estate General Fund.

This amendment went into effect May 27, 2022.

227 ILCS 427/40:

High School Diploma Required

This Section was amended to provide that in order for one to qualify for a license as a community association manager, in addition to other requirements, the person must possess a State of Illinois High School Diploma (as opposed to a high school equivalency certificate).

This amendment is effective as of January 1, 2023.

CASE LAW UPDATE

Following is a list of recent court cases along with a brief summary of each case impacting Community Associations in Illinois:

Glazer v. The Private Residences of Ontario Place Condominium Association

2022 IL App (1st) 210156

Plaintiffs, who are condominium unit owners, sued the board of directors of their condominium association. Plaintiffs argued that: (1) the owners, not the association's board of directors, had the power and authority to pursue a bulk sale; (2) the board and the association were not permitted to pursue a bulk sale without a 2/3 vote of the owners; and (3) the board had a fiduciary duty of candor and loyalty to the owners, which was breached when the board failed to provide unit owners with all relevant information. Additionally, Plaintiffs attempted to prevent the bulk sale from occurring. Plaintiffs also sought an accounting of any funds expended in furtherance of the bulk sale.

After filing suit, Plaintiffs sought a temporary restraining order arguing that the board of directors failed to have the unit owners vote before preliminary negotiations for the bulk sale began. The trial court rejected this argument and denied the request for a temporary restraining order. Plaintiffs then appealed the trial court's denial, and the appellate court affirmed the circuit court's ruling. In this first of two appeals, the appellate court held that the trial court could only enjoin a vote by the owners related to an actual offer. After this ruling, the owners voted on the proposed bulk sale, which failed. Thereafter,

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Plaintiffs attempted to amend their complaint further, but the association successfully moved to dismiss.

In the second appeal, the appellate court held that the Condominium Act provides a condominium board with all of the authority required to address its role in bulk sales. While unit owners have the right to vote on the sale of an entire property, nothing in the Condominium Act requires a board to have unit owners vote on pre-approvals or investigations. The appellate court further held that appraisals and letters of intent are not part of the documents that must be turned over to the unit owners. The appellate court also noted that Plaintiffs made a "sort of abstract, hypothetical request to render legal advice on future events that the declaratory judgment statute is not meant to encompass." Hence, the trial court's order of dismissal was affirmed.

Spiegel v. 1618 Sheridan Road Condominium Assoc., Inc.

2022 IL App (1st) 291142-U

Plaintiff and association had been involved in protracted off-and-on litigation for more than twenty (20) years. In 1998, Plaintiff initiated a lawsuit against the association for its failure to open the outdoor pool. The parties entered into a settlement agreement, which ruled that the pool be open every year Plaintiff remained an owner and which included Plaintiff's agreement not to post documents related to the association on the windows of his unit or immediately adjacent to any windows to his unit, adjacent to the front entrance, whereby Plaintiff agreed not to post any documents relating to the association in his windows. Thereafter, in 2014 and 2018, Plaintiff posted signs and the association sent him notices that he was in violation of the settlement agreement. In 2020, during the height of the COVID-19 pandemic, Plaintiff began to add signs and objects to window display at least twice a month. The signs contained remarks about the members of the board of directors and other individual members of the association. In addition, Plaintiff added photographs of the board members and incorporated a mannequin and gravestones into his display. Plaintiff filed a petition to enforce the settlement agreement because the association did not open the pool. In response, the association filed a counter-petition to enforce the settlement agreement to prevent Plaintiff from posting documents related to the association. The trial court ordered the pool to be open and ordered Plaintiff to remove all documents posted in his window. Plaintiff appealed.

Plaintiff argued that the trial court improperly extended the definition of specific terms and "Building." The appellate court determined that Plaintiff waived these arguments as he did not present them at the trial level. Plaintiff also argued that his displays were protected by the First Amendment to the Constitution of the United States. The appellate court rejected this argument as Plaintiff knowingly and voluntarily entered into the settlement agreement, which prevented him from posting certain documents. He waived his rights by knowingly, voluntarily, and intentionally signing the agreement when he had it reviewed by his attorney, when he acknowledged the section regarding his waiver, and then when he approved the agreement. Plaintiff also argued that the trial court should have found the association had waived its ability to enforce the settlement agreement because he alleged that the association waited six (6) years to seek judicial relief. The appellate court rejected this argument, too and affirmed the trial court's ruling.

Travelers Indemnity Co. of America v. Townes of Cedar Ridge Condominium Assoc.

2022 IL App (3d) 200542

Plaintiff issued an insurance policy to the association for property coverage. The association's property suffered hail damage and it filed a claim. Plaintiff determined some of the loss was covered and some was the result of wear and tear, which was excluded from the policy. In response, the association provided Plaintiff with an estimate for repairs for over $2 million dollars, much less than the payment provided by Plaintiff, and the association demanded an appraisal to resolve the dispute. Plaintiff subsequently rejected the request, not because it disagreed with the appraisal, but because it did not find wind or hail damage to the buildings. Plaintiff argued the issue was not the appraisal provision, but that the association was disputing coverage. Therefore, Plaintiff then filed a declaratory action asking the court to declare the rights of the parties. The association moved to dismiss the argument that Plaintiff rejected the demand for an appraisal, forgetting its right to ask the court to determine whether the association properly requested an appraisal and whether Plaintiff properly denied coverage. The trial court granted the motion to dismiss, and Plaintiff filed an appeal.

The appellate court rejected these arguments. The appellate court outlined that a declaratory judgment requires an actual controversy, and it did not find that one existed. Since Plaintiff undisputedly denied the association's request for the appraisal, the appraisal process was terminated, and as such, the denial ended any controversy regarding the applicability of the appraisal. The appellate court held that Plaintiff was asking for approval of past conduct, which is not something to be resolved in a declaratory action. The appellate court held that Plaintiff should have filed the request for declaratory relief before it denied the association's request for an appraisal. The appellate court affirmed the trial court's ruling.

Holtgren v. 260 Jamie Lane Condominium Assoc.

2022 IL App (2d) 210440-U

Plaintiff, who was the developer and a unit owner within the condominium association, did not wish to pay assessments on four (4) units because those units were undeveloped. Plaintiff filed a declaratory action against Defendant/association asking the trial court to enter an order stating he does not have an obligation to pay the assessment. The association filed a motion to dismiss arguing that both in the association's declaration and in the Condominium Act the duty to pay assessments exists regardless of whether the units are developed or undeveloped, seeking a determination on the assessments. The trial court granted the motion to dismiss and Plaintiff filed an appeal.

On appeal, Plaintiff argued that the definition of a "unit" is ambiguous and that the duty to pay assessments only exists if the property is a developed structure. The appellate court rejected this argument. Relying on the language of the association's declaration, the appellate court held that the definition of a unit was straightforward both in the Condominium Act and in the association's declaration. The appellate court held that because the declaration contained no specifications or limitations on the physical character of a unit or any statements requiring construction of an improvement as a condition precedent, that an improvement on the property was not required to create a "unit" within the declaration. The appellate court held that each unit owner, including the developer with undeveloped units, was required to pay his proportionate share of the common expenses, as outlined in the declaration. The appellate court affirmed the trial court's dismissal of Plaintiff's complaint.

Greater New York Mutual Insurance Co. v. Galena at Wildspring Condominium Assoc.

2022 IL App (2d) 210394

Plaintiff issued a property insurance policy to Defendant. Defendant reported damage to its property caused by a storm. Plaintiff determined that the damage was caused by hail not wind. Plaintiff issued payment to Defendant in the amount of $527,879.68, but Defendant valued the loss and damage to be $5,020,438.90, based on the estimate to make all repairs. Defendant demanded an appraisal per the terms of the policy, which Plaintiff rejected. Plaintiff then filed the lawsuit seeking a declaration of the parties' rights. Defendant filed a counterclaim also seeking a declaration of the parties' rights. The parties agreed to submit the dispute to an appraisal panel who determined the actual cost value was $1,676,394.46 and the replacement cost value was $2,634,946.98. Defendant filed a motion for summary judgment. The amount for the actual cash value and replacement cash value was determined. However, the trial court held that no interest was due to Defendant because Plaintiff made payment to Defendant within thirty (30) days after the appraisal was completed. Defendant appealed.

On appeal, Defendant argued it was entitled to interest at a rate of 5% which began to accrue thirty (30) days after it filed its proof of loss. The appellate court agreed with Plaintiff that the amount due to Defendant by Plaintiff did not come due until thirty (30) days after the final appraisal award, which Plaintiff did pay within that time. The appellate court held that there may be some times when interest is appropriate, but in this case, the amounts due were not readily ascertainable until after the appraisal. The appellate court further held that the insurance policy (the contract) between the parties stated that the loss of payment would be paid within thirty (30) days of the "parties' agreement." As the parties did not agree on the amount until the trial court ruled and because Plaintiff paid the amount awarded by the trial court within thirty (30) days, no interest was due. The appellate court affirmed the trial court's ruling.

East Lake Condominium Assoc. v. Brewer

2022 IL App (1st) 201373-U

Plaintiff filed an eviction action seeking unpaid assessments and possession against Defendant, who was a unit owner within the association. On June 18, 2019, the trial court entered an order in favor of Plaintiff, which included granting it possession of Defendant's unit. However, the order contained the wrong address for the unit. Therefore, on August 15, 2019, Plaintiff sought an order correcting the error, which was granted and the order was corrected on its face. Defendant challenged service in the case, which proceeded to an evidentiary hearing. The motion was denied and Defendant filed her first notice of appeal. Defendant attempted to stay the order of possession, but that too was denied. She was then evicted from her unit. Eventually, Defendant's first appeal was dismissed because Defendant failed to file the required documents. Defendant then filed a petition with the trial court to request a new hearing and to vacate the previous orders. She claimed she had newly discovered evidence. Defendant's motions were denied. Defendant then filed a second notice of appeal, where she appealed the trial court's denial of her subsequent motions.

The appellate court rejected many of Defendant's claims because the claims

were barred. The appellate court held that it would not consider any claims related to the issues raised in the first notice of appeal because the dismissal of the first appeal bars any further challenge. The appellate court then considered Defendant's claims related to the denial of her motions by the trial court which were filed after the dismissal of her first appeal. The appellate court held that the trial court properly denied the motion to reconsider. The appellate court also found that Defendant did not act timely when she sought additional time from the trial court to present a bystander's report to the appellate court. The appellate court affirmed the trial court's rulings.

Kiss v. Old Renwick Trail Homeowners Association, Inc.

2022 IL App (3d) 210115-U

Plaintiff was an attorney for and the former manager of Defendant. Defendant relieved Plaintiff of his duties. After he was relieved, during a board meeting which was posted on the association's website and on YouTube, comments were made by the members of the board referring to "a person" managing the association who was coming to meetings drunk. Additional comments were made about the person breathing on the face of a board member and that "…the man did not belong managing…" the association. Plaintiff filed the lawsuit alleging defamation and false light invasion of privacy. Plaintiff's complaint was amended several times. Defendant filed several motions to dismiss. The trial court granted Defendant's motion and Plaintiff filed a motion to reconsider and leave to amend, which was denied. Plaintiff then appealed.

On appeal, Plaintiff alleges that the trial court mistakenly dismissed his claims for defamation and for false light invasion of privacy and that the trial court should have allowed him to amend his pleadings. The appellate court held that certain statements are not defamatory if the statements are subject to privilege. A qualified privilege exists when a party making the statement has an interest in the publication of a statement, like when an employer is reviewing conduct of its employees. The appellate court held that since the statements at issue were made by the board of directors during a board of directors' meeting, statements related to Plaintiff's performance of his duties to the association were protected by a qualified privilege. The appellate court noted that Plaintiff was given several opportunities to amend his pleadings prior to the appeal so that he could plead facts showing the board member acted maliciously and without knowledge of the falseness of the statements, but Plaintiff did not do this. The appellate court further held that Plaintiff failed to allege specific facts demonstrating actual malice or that statements were made in reckless disregard for the truth. The appellate court found no abuse of discretion or errors by the trial court. The appellate court affirmed the trial court's rulings.

Board of Managers of Roseglen Condo Assoc. v. Harleysville Lake States Insurance Co.

2022 IL App (1st) 210265

Plaintiff first filed a lawsuit against Kirk Corporation ("Kirk"), the general contractor for the association, alleging construction defects. The defects resulted in leaks that damaged the common elements of the development. Kirk did not take action in the lawsuit and then filed for bankruptcy. Thereafter, Defendant learned of the pending action between Plaintiff and Kirk and began its investigation to determine if there was coverage. Defendant determined that there was no coverage and it closed its file. Plaintiff then voluntarily dismissed its action. In 2011, Plaintiff filed a new case alleging the same

construction defects and it eventually obtained a judgment against Kirk. Plaintiff then filed this action seeking to hold Defendant liable for the amount of the default judgment against Kirk. Both parties moved for summary judgment. The trial court then granted Defendant's motion for summary judgment as the trial court held that Kirk failed to notify Defendant of the 2011 action by Plaintiff. The failure to provide Defendant with such notice meant that Defendant was relieved of any duty to defend or indemnify its insured. Plaintiff filed an appeal.

The appellate court noted that Plaintiff conceded that Defendant did not receive notice of the 2011 action. Hence, the appellate court held that summary judgment was properly entered for Defendant as it did not have actual notice of the action, which was a prerequisite to a duty to defend. The appellate court held that the 2009 action by Plaintiff was not the same claim as the 2011 action. The claims may have been similar, but they were not identical. The appellate court recognized its ruling may lead to "seemingly unfair result," but Plaintiff could have ensured that Defendant received actual notice of the 2011 action which could have led to Defendant then having a duty to defend. The appellate court affirmed the trial court's rulings.

4043 S. Drexel Condominium Association v. Burke

2022 IL App (1st) 210666-U

Plaintiff is a twelve (12) unit association. Defendants collectively owned eight (8) of the twelve (12) units. Plaintiff filed suit against Defendants seeking a declaration of rights, injunctive relief, and damages. Plaintiff sought a court order declaring that the board of directors for the association elected in November 2017, was a duly elected board of directors and not the persons elected at a meeting called by Defendants. Plaintiff also sought a court order declaring that the association properly amended its declaration to reduce the number of persons required to sit on the board of directors from five (5) to three (3). In addition, Plaintiff wanted the court to declare that Defendants' meeting to elect a board of directors in 2018 was invalid. The trial court held that the election held by the association in November 2017 was invalid because notice of the meeting was not properly given to the owners. The trial court held that the amendment to the declaration to reduce the number of persons on the board of directors was not valid as prior to submitting the issue to a vote of the owners, the actual written amendment was not presented to the owners. The trial court concluded that Defendants' calling of the meeting in 2018 was proper. Thereafter, the trial court ruled that persons elected to the board of directors on October 12, 2020, were the current members of the board. Plaintiff filed an appeal.

The appellate court held that the election on November 4, 2017, was improper because the election did not occur at a properly called meeting, but instead all was conducted by email, which was not allowed. The appellate court held that the trial court properly concluded that the amendment was invalid since the actual amendment was not presented in writing to the unit owners in advance of voting and because there was no evidence that any vote of the unit owners was taken since there were no ballots to support the votes given. The appellate court also ruled Burke's elected board in August 2018 was valid. The appellate court held that Plaintiff lacked standing to bring the lawsuit since it was pursued by an improperly elected board of directors. The appellate court did recognize that individual unit owners may assert similar claims against Defendants in derivative actions. The appellate court affirmed the trial court's rulings.

Morgan's Orchard Lake Homeowners' Association v. Morgan

2022 IL App (3rd) 220006-U

Plaintiff filed an eviction action against Defendant seeking to recover unpaid assessments and possession. After a bench trial, judgment was entered in favor of Plaintiff, but Defendant then filed a motion to vacate/modify the judgment. Defendant argued that the owners did not vote to approve the assessments being sought against Defendant, as required by the declaration. The trial court granted Defendant's motion. Plaintiff appealed.

On appeal, Plaintiff argued that the assessments sought against Defendant were validly approved by the board, when it approved its annual budget. Plaintiff relied on the terms of CICAA to assert that it was a function of the board of directors to determine the amount of assessments to be collected. The appellate court rejected Plaintiff's argument. The appellate court held that Plaintiff's board of directors did not have the authority to unilaterally decide on the assessment amounts based on its governing documents. That is, the appellate court held that the terms of the association's declaration, which provided that assessments "shall be determined by Voting Members at any annual meeting or any special meeting called for that purpose," should have been followed. The appellate court further held that the board of directors was to provide voting members with notice of the date and time of its annual meeting, which it did not. The appellate court also rejected Plaintiff's argument that there was a conflict between the terms of the association's declaration and CICAA regarding the adoption of assessments. The appellate court held that CICAA does not alter the voting members' authority pursuant to the declaration as to how regular assessments are determined. The appellate court held that CICAA does not provide an association's board with authority to adopt regular assessments. The appellate court affirmed the trial court's ruling.

Station Place Townhouse Condominium Association, et al. v. Village of Glenview

2022 IL App (1st) 211131-U

Plaintiff filed suit against Defendant seeking to invalidate Defendant's sale of property to a developer and its subsequent approval of a zoning ordinance approving the proposed development. Plaintiff's action was dismissed by the trial court. On appeal, the Appellate Court affirmed the ruling of the trial court, holding, among other things, that a home rule jurisdiction had the authority to sell property owned by it without complying with the terms of the Illinois Municipal Code and that avoiding action taken by a municipality in open session is not a remedy under the Open Meetings Act. In short, this case is a valid reminder of the adage, you can't fight city hall.

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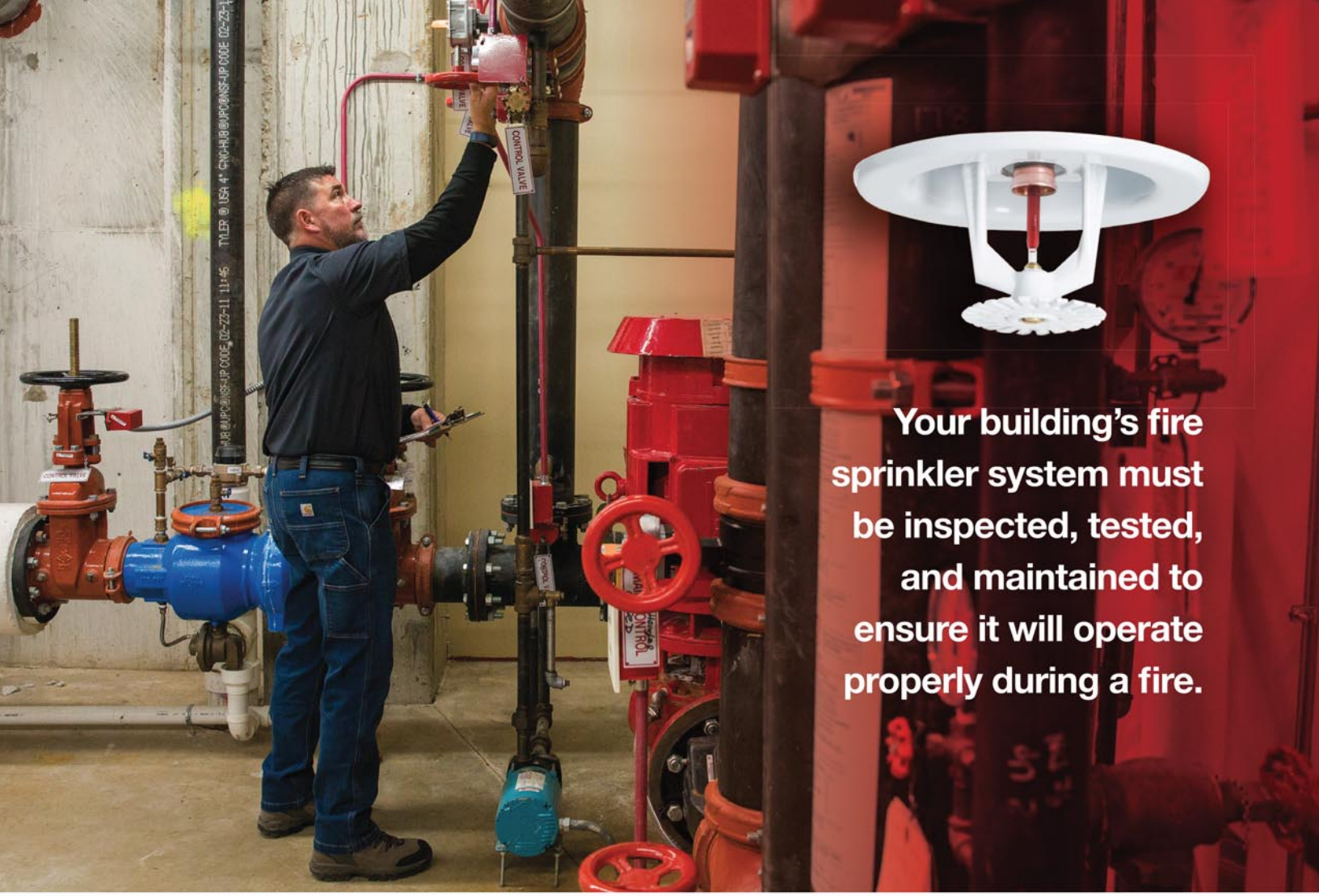

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