

## **Additional Readings**

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## Reading #1: Summary of Amicus Curiae Activity

### CAI Government & Public Affairs Department

CAI is active in preparing amicus curiae (friend of the court) briefs in federal and state cases that pose questions of significant importance in community association law. This aspect of CAI's overall government and public affairs program is vital to preserve the legal rights of community associations and their homeowners. CAI's success in this area is the result of the tremendous hard work and dedication of the members of CAI's Amicus Curiae Advisory Group and other individuals who also assist pro bono to review brief requests, draft and file briefs, or argue in select cases.

#### Amicus Curiae Briefs Filed With Decisions Issued:

- **Raintree Homeowners Association v. Bleimann**: 342 N.C. 159; 463 S.E. 2d. 72; 1995. Brief filed June 1995. Case decided November 1995. In a favorable ruling, the North Carolina Supreme Court upheld the enforceability of an association's prohibition of vinyl siding.
- **Midlake on Big Boulder Lake Condominium Association v. Cappuccio**: 449 Pa. Super. 124; 673 A.2d 340; 1996. Brief filed May 1995. Case decided January 1996. In a favorable ruling, the Pennsylvania Superior Court held that an association's sign prohibition did not violate the First Amendment.
- **Stewart v. Kopp**: 118 N.C. App.161; 454 S.E.2d 672; 1995. Brief filed February 1996. Case decided March 1996. In a favorable ruling, the U.S. District Court in North Carolina upheld the constitutionality of the North Carolina Condominium Act, which is based on the Uniform Condominium Act.
- **Maryland Estates Homeowners Association v. Puckett**: 936 S.W.2d 218; 1996. Brief filed June 1996. Case decided December 1996. In a favorable ruling, the Missouri Court of Appeals upheld an association restriction on parking large trucks on association streets dedicated to the public.
- **Obradovich v. Longwood Knolls Homeowners Association**: Brief filed March 1997. Case decided May 1997. In a favorable ruling, the Supreme Court of Virginia dismissed a constitutional challenge to the Virginia Property Owners' Association Act and its provisions for the retroactive application of attorneys' fees.
- **Newman v. Boehm, Pearlstein & Bright; Riter v. Moss & Bloomberg**: 119 F.3d 477; 1997. Brief filed October 1996. Case decided July 1997. In an unfavorable ruling, the Seventh Circuit Court of Appeals determined that attorneys collecting assessments are debt collectors subject to the Fair Debt Collection Practices Act on the basis that community association assessments are consumer debts under the Act. This decision binds all attorneys and managers in Illinois, Indiana, and Wisconsin.

- **Sun City Summerlin Community Association v. Nevada**: 113 Nev. 835; 944P.2d 234; 1997. Brief filed October 1996. Case decided August 1997. In an unfavorable ruling, the Nevada Supreme Court held that certain taxation provisions in the Nevada Common Interest Ownership Act (based on UCIOA) regarding planned communities were unconstitutional under the Nevada constitution.
- **Pagosa Lakes Property Owners Association v. Caywood**: 973P.2d 698; 1998. Brief filed August 1997. Case decided August 1997. In a favorable ruling, the Colorado Court of Appeals upheld association's ability to enact building and other regulations under the Colorado Common Interest Ownership Act, which is based on the Uniform Common Interest Ownership Act.
- **Stone Hill Property Owners Association v. Town of Vernon**: Brief filed November 1997. Case decided May 1998. In a favorable ruling, the Superior Court of New Jersey, Appellate Division determined that under the New Jersey Municipal Services Act the municipalities must reimburse community associations for street lighting expenditures. CAI authorized and filed a New Jersey Chapter brief in this case.
- **Read v. the Scott Fetzer Company d/b/a the Kirby Company**: 990S.W.2d 732; 1998. Brief filed April 1998. Case decided December 1998. In an unfavorable ruling, the Texas Supreme Court determined that community association management firms, among other property managers, should be held liable for sexual assaults committed by an independent contractor. CAI's Texas Chapters that filed the brief have filed supporting the rehearing of the case.
- **Lamden v. La Jolla Clubdominium Association**: 959 P.2d 183; 1998. Brief filed November 1998. Case decided August 1999. In a favorable ruling, the California Supreme determined that the business judgment rule should be the standard by which a California association board's maintenance decisions should be evaluated. CAI's brief urged the California Supreme Court to adopt the business judgment rule rather than the rule of reasonableness.
- **Ledgewood Village Condominium Association v. Lowe**: Brief filed December 1998. Case decided November 1999. In a favorable ruling, the Superior Court of New Jersey affirmed a trial judge's finding that a New Jersey homeowner may not use the off-set argument (that the association failed to provide services) as a defense in an assessment collection suit. CAI and its New Jersey Chapter had filed a brief opposing allowance of the off-set argument.
- **Woodhawk Club Condominium Owners Association v. City of Mayfield Heights**: 2000 U.S. App. Lexis 1835. Brief filed March 1999. Case decided February 2000. In an unfavorable ruling, the United States Court of Appeals for the Sixth Circuit determined that the City of Mayfield Heights had a legitimate governmental interest in controlling municipal expenditures for garbage collection by not providing garbage collection services to the community even though the residents were paying taxes for garbage removal.

- **Association of Apartment Owners of Maalaea Kai v. Stillson**: 2000 Haw. Lexis 57. Brief filed June 1999. Case decided February 2000. In a favorable ruling the Supreme Court of Hawaii held that a 100% resident vote was not required to approve unit purchase and sale by a leasehold condominium association.
- **Briarglen II Condominium Association v. Township of Freehold**: 2000 N.J. Super. Lexis 168. Brief filed December 1999. Case decided April 2000. In a favorable ruling, the Superior Court of New Jersey held that the New Jersey Municipal Services Act required the township to reimburse the association for expenses incurred for snow/ice removal, street lighting and trash removal. CAI authorized and filed a New Jersey Chapter brief in this case.
- **Lakes of the North Association v. Twiga Limited Partnership**: Brief filed April 1999. Case decided May 2000. In a favorable ruling, the Michigan Court of Appeals held that properties in question fell under the private deed restriction exception of the General Property Tax Act; therefore, the association has a right to collect prospective assessment fees. CAI authorized a national brief asserting that a purchaser of a property at a tax sale accepts the property subject to association restrictions.
- **Mountain View Condominium Owners Association v. Maria P. Bomersbach**: Brief filed May 2000 and decided April 5, 2001. In a favorable ruling, the Supreme Court of Pennsylvania upheld an earlier ruling allowing an association to collect attorney's fees that were incurred by an association when collecting from a unit owner who was delinquent in the payment of assessments.
- **Hunters Pointe Condominium Association v. Csicsila**: Brief filed April 2000 and decided November 30, 2001. The case involves whether a co-owner's unauthorized installation of a hot tub on a condominium association's limited common element deck represents an alternation or the placement of personal property. In a favorable ruling, the Michigan Court of Appeals reversed a trial court decision, and supported the authority of community associations to regulate the placement of personal property on common elements since such actions can significantly impact the structural and visual integrity of the common element and the community at large.
- **Berish v. Bornstein**: A national brief was filed in January 2002. This case, 14 years in the making, is whether the warranty of habitability at Cotuit Bay Condominiums is implied in the sale of a newly constructed condominium unit or in the transfer of newly constructed common areas to an organization of unit owners, some of which have already caused damages while it is likely other latent defects will soon result in other damages. In June 2002, the Massachusetts Supreme Judicial Court concluded that such a warranty is implied in both types of transactions.
- **Landau v. Weil**: Requested in February 2002, this Missouri case regards a trial judge's ruling that one of the trustees/plaintiffs had a conflict of interest and

couldn't bring the action in his capacity as trustee. The judge decided that the suit, if successful, would yield differential results among the homeowners, with the trustee/plaintiff's lot receiving the most benefit. A chapter brief was filed in April 2002. In October 2002, the Missouri Court of Appeals dismissed the appeal on the grounds that it was not ripe because an easement ruled abandoned by the trial court was not adequately described in the judgment. A new appeal was filed in summer of 2003, and a second chapter brief and Motion for Leave was filed on August 11, 2003.

#### **Amicus Curiae Briefs Filed With Decisions Pending:**

- **Osorno & Suarez v. Trustees of Mariners Landing Condominium:** Brief filed March 2000. The issue in this case deals with a local statute that makes the owner of land which is defined as an apartment building, a place of public assembly, a theater, etc., strictly liable to a worker injured on premises due to various deficiencies. CAI authorized its New England Chapter to file a brief asserting that the court should rule the association exempt under the statute's exception for single family homes
- **Sandpiper Homeowners Association v. Berphiaume:** Brief request submitted March 2001. In this case, Sandpiper HOA is seeking to recover fees incurred during litigation against a homeowner who failed to pay monthly assessments. The homeowner settled the case, but the parties could not agree on the amount of counsel fees to be paid by the homeowner. Attorneys for Sandpiper filed a motion for counsel fees, which the association is contractually entitled to receive, but it was denied, by the court.
- **Sawgrass Village of Timber Greens v. Hertel:** Brief request submitted July 1998. The issue presented was whether a homeowner association has the authority to adopt amendments to its CC&Rs that required homeowners to pay for cable services as part of their assessments. CAI authorized its Florida Chapters to file a joint brief in the case, however, the trial court has scheduled a rehearing and no brief may be required.
- **Wycoff's Mill Condominium Association v. Borough of Highstown:** Brief requested March 2000. The issue presented was whether the 45-day limit for filing a lawsuit, which is applicable to actions against municipalities in lieu of prerogative writs, applies to lawsuits against municipalities for failing to comply with New Jersey's Municipal Services Act. CAI authorized its New Jersey Chapter to file a brief in support of the association's position.
- **Coosawattee River Resort Association v. Foxworthy, Inc.** In this Georgia case, the association seeks to recover a judgment in the amount of \$44,382.37 plus interest, attorney's fees and expenses for unpaid assessments, which accrued after property was purchased in a 1999 tax foreclosure sale. In November 2000, the court denied the association's motion for summary judgment and granted Foxworthy's motion for summary judgment. CAI authorized a chapter brief to be filed in the appeal.

- **Novitt v. Queenston Common:** Brief filed in March 2002. The main issue in this case, is whether, in the absence of specific authorization in a master deed or bylaws, a New Jersey condominium association has the power to borrow money for a common element replacement project (siding and windows in this case.)
- **Evergreen Highlands Association v. Robert West:** Brief filed in March 2002. A national brief was authorized in this case in which the Colorado Court of Appeals ruled against the association, declaring that the phrase “may be amended” relating to the governing documents does not allow the addition of new covenants. The Court says only existing language may be amended. In September 2002, the Colorado Supreme Court has granted cert in this matter, and heard oral arguments in March 2003.
- **Brandon Farms Property Owners Association v. Brandon Farms Condominium Association:** This New Jersey case relates to the relationship of the POA and the condominium associations, specifically the collection and payment of assessments, and the enforceability of the Declaration. A national brief was authorized in December 2002.

**Amicus Curiae Briefs Authorized But Not Filed:**

- **Hills v. Greenfield Village Homes Association:** Brief request submitted November 1997. The issue presented involved the duty of a Missouri homeowners association to treat an individual residence for termites. CAI authorized a national brief in the case, however, the Missouri Supreme Court declined to hear the case and, accordingly, no brief was needed.
- **Blackhorse Homeowners Association v. Kaufman:** Brief request submitted April 1998. The issue presented was whether the existence of an unrecorded deed conveying a unit owner's interest to another extinguishes the responsibility of the unit owner to pay assessments. CAI authorized its San Diego Chapter to file a brief in this case, however, the Court denied the motion to file.
- **Sherer v. Pebble Beach Property Owners Association:** Brief request submitted September 1999. The issue presented was whether a Texas association could enforce its restrictions against a manufactured home. CAI authorized one or more of its Texas Chapters to file a brief. However, the Texas Supreme Court denied writ on the case and the favorable decision of the Court of Appeals stands.
- **Westbrooke Patio Homes Association v. Goodrich:** Brief request submitted July 1999. The issue presented was whether a discharge in bankruptcy bars a Minnesota association from foreclosing on a lien placed on property for nonpayment of post-petition assessments. CAI authorized a national brief in this case supporting the decision by the Minnesota trial court that the bankruptcy discharge did not extinguish the lien on the property, however, a delay in preparing the brief prevented its submission.

- **Kim v. Flagship Condominium Association:** Brief requests submitted April 1999 and February 2000. The issue presented was whether a New Jersey association operating as a condo-hotel has the duty to promote one unit owner's economic interests. Initially, CAI authorized a national brief in this case supporting the association's position, however, the Appellate Court noted that it had begun to review the case and declined to consider the brief after it was submitted. A second brief request was submitted when the case reached the New Jersey Supreme Court and CAI again authorized a national brief to be filed in support of the association's position. Unfortunately, the New Jersey Supreme Court declined any additional information about the issues for they were only going to determine the amount of damages.
- **Garden Lakes Community Association v. Speak, Madigan et. al.:** Brief request submitted December 2000. Garden Lakes brought suit against homeowners to enforce provisions of the Declaration requiring written approval prior to the installation of solar panels that would be visible from neighboring or common property. On August 9, 2000, the court entered judgment against Garden Lakes, denying the Association's requested injunction, and awarding the homeowners approximately \$75,000 in costs and attorneys fees. After reviewing the court documents CAI authorized a chapter brief in this case.

**Amicus Curiae Brief Requests Considered But Not Authorized:**

- **Seagate Colony Council of Co-Owners v. Browne:** Brief request submitted July 1997. The issue presented was when a capital expenditure became sufficiently "anticipated" to require disclosure to prospective purchasers under Section 55-79.97 of the Virginia Condominium Act. CAI declined to authorize a brief in this case.
- **Quinones v. BOM of Regal Walk I Condominium:** Brief request submitted August 1997. The issue presented was the ability of a New York condominium board to prohibit a day care facility operated by association residents. CAI declined to authorize a brief in this case.
- **Reeves v. Carrollsburg Condominium:** Brief request submitted September 1997. The issue presented was the liability of a Washington, DC condominium association to a resident for sexual and racial harassment committed by another resident. CAI determined that action in this case was premature, as the case has not reached the appellate stage. Accordingly, CAI declined to authorize a brief in this case. The case was settled by the association, which paid damages and agreed to purchase the plaintiff's unit.
- **Ozaki v. Association of Apartment Owners of Discovery Bay:** Brief request submitted March 1998. The issue presented involved the joint and several liability of a Hawaii association with a murderer for the death of an association resident. CAI declined to authorize a brief in this case.
- **Cunningham v. Superior Court:** Brief request submitted November 1998. The issue presented in this California case was whether a community association

board's decision to require a unit owner to clean his unit should be evaluated according to the business judgment rule or the reasonableness rule. CAI declined to authorize a brief in this case.

- **Piper, Dipietro & Nickson v. Hillside Estates Condominium Association:** Brief request submitted November 1998. The issue presented in this New Hampshire case was whether a judge could award prevailing homeowners attorneys' fees where the statute explicitly provides for an attorneys' fees award only to prevailing associations. CAI declined to authorize a brief in this case.
- **Simi Valley Le Parc HOA v. ZM Corporation:** Brief request submitted August 1999. The issue presented was whether a receiver satisfying an arbitration award by collecting assessments may refuse to pay utilities and other necessary association expenses from the assessments collected. CAI declined to authorize a brief in this case.
- **Sadler v. Stoerzbach:** Brief request submitted August 1999. The issue presented was whether an Illinois homeowner has standing in order to enforce her association's CC&Rs against alleged violators. CAI declined to authorize a brief in this case.
- **Cedarwood Homeowners Association v. Dermody:** Brief request submitted August 1999. The issue presented was whether a homeowners association could recover funds from the California Department of Real Estate Recovery Fund to cover losses sustained by embezzlement of association funds by a manager who was also a licensed real estate broker. CAI declined to authorize a brief in this case.
- **Hersh Companies Inc. v. Highline Village Associates:** Brief request submitted September 2000. The issue presented was whether the courts may toll the statute of limitations in a construction defect case where the contractor convinces a party to delay filing suit by making express promises of repair. CAI declined to authorize a brief in this case.

*For more information, please contact CAI's Government & Public Affairs Department by email ([g&pa@caionline.org](mailto:g&pa@caionline.org)), fax (703-684-1581) or phone (703-548-8600).*

## **Reading #2: Summary of Public Policies**

Community Associations Institute

### **AESTHETICS AS AN ECONOMIC ISSUE**

CAI opposes any and all attempts at the federal, state and local levels to enact laws or regulations that ignore or negate the economic importance of aesthetic controls.

### **ALTERNATIVE DISPUTE RESOLUTION MECHANISMS**

CAI recognizes the need for and supports the use of alternative dispute resolution mechanisms to resolve disputes arising in community associations in appropriate cases.

### **ASSESSMENT COLLECTION FROM OWNERS IN BANKRUPTCY**

CAI supports an amendment to the United States Bankruptcy Code to provide for the payment of post-petition common expense assessments by debtors solely on the basis of an ownership interest in property in any type of community association. Additionally, CAI supports clarification so that community association assessments are not considered executory contracts.

### **ASSESSMENT INCREASE LIMITATIONS**

CAI supports the elimination of any requirement that community association documents prohibit the increase of assessments by the board of directors above a fixed percentage without approval of a vote of owners.

### **COMMUNITY ASSOCIATION BUDGETS AND RESERVES**

CAI believes it is imperative for all community associations to adopt and use a financial planning and budget process which accurately reflects projected annual operating costs and long-term capital or major expenses ("reserves") and results in a balanced budget. CAI believes that the developer and developer-controlled board should prepare and disclose the initial budget to assure accurate estimation of projected operating costs and reserves. CAI also supports full and open disclosure to owners and the opportunity for participation by owners in the development of the budget. Further, CAI opposes laws which would mandate how community associations fund and maintain reserves.

### **COMMUNITY ASSOCIATION MANAGER CREDENTIALING**

CAI encourages the national certification of community association managers. In states that propose mandatory regulation of community association managers, CAI will support a regulatory system that incorporates adequate protections for homeowners, mandatory education and testing on fundamental management knowledge, standards of conduct and appropriate insurance requirements. CAI opposes the licensing of community association managers as real estate brokers, agents or property managers.

### **COMMUNITY ASSOCIATION MEMBERS' AND RESIDENTS BILL OF RIGHTS**

CAI supports a balance of the rights of an individual owner in a community association with the need for effective management of the affairs of the association

for the benefit of all the owners. Reasonable association procedures which empower the board of directors and staff of the community association to perform their obligations efficiently must take into account the rights of an individual owner to privacy, enjoyment of his or her home and full participation in the community association

### **COMMUNITY ASSOCIATION TAXATION**

CAI supports the elimination of the residential requirements of Code Section 528; the gross revenue of 60% test of Code Section 528; the 90% expenditure test of Code Section 528; the flat 30% tax rate of Code Section 528 and replacement with an average marginal tax rate, paid by individual taxpayers.

### **EFFECTIVE COLLECTION OF COMMUNITY ASSOCIATION ASSESSMENTS**

CAI supports effective, fair and reasonable collection methods, including lien rights and due process protections, and opposes government limitations on their efforts. CAI also supports reasonable procedures to accommodate unit owners experiencing temporary financial difficulties.

### **ELECTRIC UTILITY DEREGULATION**

CAI supports electric utility deregulation provided it benefits community associations and their residents through enhanced choice, reduced costs and higher quality of service. CAI does not support electric utility deregulation initiatives that would limit the ability of community associations and their residents to receive quality electric service at a fair price.

### **ENVIRONMENTAL QUALITY**

CAI strongly supports protection of the health and well-being of all individuals residing or working in common-interest communities by increasing sensitivity to environmental quality; and environmental quality in common-interest communities and remediation of environmental pollution, including harmful substances contained in building materials and landfills.

### **FAIR DEBT COLLECTION PRACTICES ACT**

CAI supports legislative, regulatory or judicial actions to establish that community association assessments are not "consumer debt" as defined by the Fair Debt Collection Practices Act or similar state statutes.

### **FAIR HOUSING**

CAI supports the right of all individuals to be free from illegal discrimination on the basis of race, creed, color, sex, national origin, familial status or handicap. CAI also supports the right of community associations to enforce their covenants, by-laws and rules provided they do not illegally discriminate against any protected class. CAI will progressively pursue fair and reasonable interpretations and administration of, or changes to, Fair Housing Acts and related legislation and regulations.

### **FEDERAL HOME LOAN MORTGAGE CORPORATION PROPOSED EARTHQUAKE REQUIREMENTS FOR CERTAIN CONDOMINIUMS IN CALIFORNIA**

CAI supports a one-year delay in implementation of the Federal Home Loan

Mortgage Corporation (Freddie Mac) Bulletin No. 95-2 and the appointment of an industry task force to develop better ways to protect Freddie Mac's interests without adverse impact on the availability of financing for condominium housing.

### **FINANCING AVAILABILITY FOR COMMUNITY ASSOCIATION UNITS OR LOTS**

CAI urges the promotion by federal lending-related agencies and the secondary market to promote the availability of adequate financing programs for community association housing. CAI supports the development of consistent national legal and underwriting standards for community associations, and reciprocal approval of community associations by federal agencies and the secondary mortgage market and urges federal lending-related agencies and the secondary market to promote the availability of financing for community association housing.

### **FLOOD INSURANCE**

CAI believes that flood insurance should be available to all community associations, either through primary carriers or through a federally supported program. Such coverage should be made available at rates that are appropriate to the risk without a coinsurance requirement and on a basis that recognizes the ownership structure of the community association involved.

Such insurance coverage shall be provided in a manner that is fitting for the exposure faced by the association that distinguishes between the insurance responsibilities of the association and the individual residents and/or owners, and in accordance with the insurance responsibilities of the individual community associations, whether they are condominiums, cooperatives, homeowners associations, or PUDs.

CAI urges the insurance industry to be responsive to the flood insurance needs of community associations by providing the necessary coverage based on need, risk, and the practical considerations of community associations, both in general and as an optional alternative to government provided flood insurance under the National Flood Insurance Program (NFIP). At the same time CAI urges FEMA to review the terms, conditions, zone maps, and rating structure of the flood insurance coverage it provides community associations, under the NFIP, and revise them as necessary, to reflect the need, risk, financial and practical considerations of community associations.

### **GOVERNMENT REGULATION OF COMMUNITY ASSOCIATIONS**

CAI supports effective state legislation—when it is deemed necessary for consumer protection, conversion limitations, protections for ongoing operations or other additions to existing statutes or common law, to ensure that community association housing is developed and maintained consistently with legitimate public policy objectives and standards that protect individual consumers, balancing the legitimate rights of the development industry. Local legislation concerning the creation or governance of community associations is antithetical to a balanced, well-considered weighing of all issues and interests affecting community associations, encourages a patchwork of regulations within an individual state and is, therefore, better dealt with at the state level.

### **HOME-BASED BUSINESSES IN COMMUNITY ASSOCIATIONS**

CAI recognizes and supports the rights of residential common-interest communities to regulate the nature of commercial activities within their communities, including the option to choose whether or not individual residences can be used as home-based businesses. CAI encourages associations that regulate commercial activities to restrict only those activities that the associations have reasonably determined have an adverse effect on the community and to permit childcare facilities, home office use and other home-based businesses that do not have an adverse effect. CAI supports the amendment of covenants to allow home-based businesses that do not have an adverse impact on the community. CAI opposes legislation that would supercede any covenant restrictions on home-based commercial activities.

### **HOMEOWNER INVOLVEMENT IN COMMUNITY ASSOCIATIONS**

CAI believes in direct homeowner involvement and participation in community associations and should be encouraged throughout the developmental process and operational phases of community associations.

### **INSURANCE TRUSTEE ENDORSEMENT REQUIREMENT**

CAI encourages the secondary mortgage market to implement the addition of an Insurance Trustee endorsement requirement for community association property insurance policies for new projects in order to provide protection to the assets of the community association in the event of a major catastrophe, and opposes naming Freddie Mac or other secondary mortgage market entity as a loss payee on a community association insurance policy.

### **LIABILITY OF COMMUNITY ASSOCIATION VOLUNTEERS**

CAI supports legislative protections against unwarranted legal liability for volunteers serving as members of a community association board of directors or committee, to enable them to make responsible judgments without fear of personal loss interfering with the judgment or decision making process. CAI further supports indemnification of community association volunteers and the provision of directors and officer's insurance coverage as a common expense.

### **LIMITED LIEN PRIORITY FOR COMMUNITY ASSOCIATION ASSESSMENTS**

CAI supports a six-month priority lien over the first mortgage for regularly paid assessments and modification of any laws restricting lending institutions from making loans which are subject to the community association assessment lien priority.

### **LOCAL TAXATION AND PUBLIC SERVICES FOR COMMUNITY ASSOCIATIONS**

CAI believes that common interest communities should not be taxed for municipal services not provided. Separate assessment and taxation of common property is unjust double taxation. Homeowners should be allowed to deduct association assessments attributable to the performance of public functions.

### **PRIVATE PROPERTY PROTECTION**

CAI supports protections that enable property owners to challenge and resolve

efforts to take common property. CAI opposes legislative, regulatory or judicial actions that would limit or restrict the ability and rights of community associations to maintain control over association common property.

**QUALITY CONSTRUCTION AND RIGHTS OF ASSOCIATIONS AND BUILDERS IN THE EVENT OF DEFECTS**

CAI believes that builders and construction professionals should deliver a product made with quality workmanship and free from defects. CAI also recognizes that homeowners must be reasonable in their expectations of the quality of construction of their homes. CAI supports legislation and regulations concerning construction defects that adequately balance the rights and responsibilities of community associations, their boards and homeowners, and of builders and construction professionals.

**REASONABLE OCCUPANCY STANDARDS**

CAI supports the right of community associations to establish reasonable occupancy standards. CAI opposes the implementation and enforcement of the Federal Fair Housing Act in a way that treats reasonable occupancy standards as discrimination on the basis of familial status. Under no circumstances should an occupancy standard of two persons per bedroom plus infants constitute discrimination under the Federal Fair Housing Amendments Act.

**RENTERS IN COMMUNITY ASSOCIATIONS**

CAI supports a balanced approach to the treatment of tenants in community associations, while protecting traditional property rights, including reasonable regulation of transient occupancy, tenant compliance with association standards, and the integration of tenants into the community on an equal basis.

**RULES DEVELOPMENT AND ENFORCEMENT**

CAI supports legally sound, fair and equitable rules development and enforcement procedures in community associations.

**SUPPORT FOR THE UNIFORM ACTS**

CAI supports and recommends consideration and adoption of the one or more of the Uniform Community Association Acts by all states. In those states where it is not appropriate, practical or possible to adopt one or more of these uniform acts in their entirety, the Institute supports and recommends consideration of appropriate portions of these laws.

**TELECOMMUNICATIONS**

CAI supports the growth of competition in the telecommunications and video programming marketplace among telephony, cable, satellite, television broadcast, wireless cable, and other providers so that community association residents will have access to advanced, innovative services. However, CAI opposes governmental regulation that would require community associations to permit telecommunications providers, video programming providers or individual association residents to install equipment or wiring on common property without prior association approval and control. CAI also opposes any federal or state

initiatives that would limit a community association's ability to enter into telecommunications or video programming contracts.

**TRANSITION OF COMMUNITY ASSOCIATION CONTROL FROM THE DEVELOPER TO HOMEOWNERS**

CAI recognizes that successful transition is the responsibility of the developer, through continuing training, education programs, and homeowner involvement in association governance.

**VETERANS ADMINISTRATION GUARANTEEING LOANS SECURED BY SHARES OF STOCK IN A HOUSING COOPERATIVE**

CAI supports and urges that Congress amend 38 U.S.C. 1810, to allow the same veteran's benefits to a housing cooperative purchaser as it does to a purchaser of condominium housing.

## Reading #3: Over-the-Air Reception Devices Rule Fact Sheet

(From FCC Website: <http://www.fcc.gov/mb/facts/otard.html>)

### **Preemption of Restrictions on Placement of Direct Broadcast Satellite, Multichannel Multipoint Distribution Service, and Television Broadcast Antennas**

As directed by Congress in Section 207 of the Telecommunications Act of 1996, the Federal Communications Commission adopted the Over-the-Air Reception Devices Rule concerning governmental and nongovernmental restrictions on viewers' ability to receive video programming signals from direct broadcast satellites ("DBS"), multichannel multipoint distribution (wireless cable) providers ("MMDS"), and television broadcast stations ("TVBS").

The rule is cited as 47 C.F.R. Section 1.4000 and has been in effect since October 14, 1996. It prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. The rule applies to video antennas including direct-to-home satellite dishes that are less than one meter (39.37") in diameter (or of any size in Alaska), TV antennas, and wireless cable antennas. The rule prohibits most restrictions that: (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal.

Effective January 22, 1999, the Commission amended the rule so that it also applies to rental property where the renter has an exclusive use area, such as a balcony or patio.

On October 25, 2000, the Commission further amended the rule so that it applies to customer-end antennas that receive and transmit fixed wireless signals. This amendment became effective on May 25, 2001.

The rule applies to viewers who place antennas that meet size limitations on property that they own or rent and that is within their exclusive use or control, including condominium owners and cooperative owners, and tenants who have an area where they have exclusive use, such as a balcony or patio, in which to install the antenna. The rule applies to townhomes and manufactured homes, as well as to single family homes.

The rule allows local governments, community associations and landlords to enforce restrictions that do not impair the installation, maintenance or use of the types of antennas described above, as well as restrictions needed for safety or historic preservation. In addition, under some circumstances, the availability of a central or common antenna can be used by a community association or landlord to restrict the installation of individual antennas. In addition, the rule does not apply to common areas that are owned by a landlord, a community association, or jointly by

condominium or cooperative owners. Such common areas may include the roof or exterior wall of a multiple dwelling unit. Therefore, restrictions on antennas installed in or on such common areas are enforceable.

This fact sheet provides general answers to questions that may arise about the implementation of the rule, but is not the rule itself. For further information or a copy of the rule, call the Federal Communications Commission at 888-CALLFCC (toll free) or (202) 418-7096. The rule is also available via the Internet by going to [links to relevant Orders and the rule](#).

**Q: What types of antennas are covered by the rule?**

A: The rule applies to the following types of video antennas:

(1) A "dish" antenna that is one meter (39.37") or less in diameter (or any size dish if located in Alaska) and is designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite.

(2) An antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via MMDS (wireless cable) or to receive or transmit fixed wireless signals other than via satellite.

(3) An antenna that is designed to receive local television broadcast signals. Masts higher than 12 feet above the roofline may be subject to local permitting requirements.

In addition, antennas covered by the rule may be mounted on "masts" to reach the height needed to receive or transmit an acceptable quality signal (e.g. maintain line-of-sight contact with the transmitter or view the satellite). Masts higher than 12 feet above the roofline may be subject to local permitting requirements for safety purposes. Further, masts that extend beyond an exclusive use area may not be covered by this rule.

**Q: What are "fixed wireless signals"?**

A: "Fixed wireless signals" are any commercial non-broadcast communications signals transmitted via wireless technology to and/or from a fixed customer location. Examples include wireless signals used to provide telephone service or high-speed Internet access to a fixed location. This definition does **not** include, among other things, AM/FM radio, amateur ("HAM") radio, Citizens Band ("CB") radio, and Digital Audio Radio Services ("DARS") signals.

**Q: Does the rule apply to hub or relay antennas?**

A: The rule applies to "customer-end antennas" which are antennas placed at a customer location for the purpose of providing service to customers at that location.

The rule does not cover antennas used to transmit signals to and/or receive signals from multiple customer locations.

**Q: What types of restrictions are prohibited?**

A: The rule prohibits restrictions that impair a person's ability to install, maintain, or use an antenna covered by the rule. The rule applies to state or local laws or regulations, including zoning, land-use or building regulations, private covenants, homeowners' association rules, condominium or cooperative association restrictions, lease restrictions, or similar restrictions on property within the exclusive use or control of the antenna user where the user has an ownership or leasehold interest in the property. A restriction impairs if it: (1) unreasonably delays or prevents use of; (2) unreasonably increases the cost of; or (3) precludes a person from receiving or transmitting an acceptable quality signal from an antenna covered under the rule. The rule does not prohibit legitimate safety restrictions or restrictions designed to preserve designated or eligible historic or prehistoric properties, provided the restriction is no more burdensome than necessary to accomplish the safety or preservation purpose.

**Q: What types of restrictions unreasonably delay or prevent viewers from using an antenna?**

A: A local restriction that prohibits all antennas would prevent viewers from receiving signals, and is prohibited by the Commission's rule. Procedural requirements can also unreasonably delay installation, maintenance or use of an antenna covered by this rule. For example, local regulations that require a person to obtain a permit or approval prior to installation create unreasonable delay and are generally prohibited. Permits or prior approval necessary to serve a legitimate safety or historic preservation purpose may be permissible.

**Q: What is an unreasonable expense?**

A: Any requirement to pay a fee to the local authority for a permit to be allowed to install an antenna would be unreasonable because such permits are generally prohibited. It may also be unreasonable for a local government, community association or landlord to require a viewer to incur additional costs associated with installation. Things to consider in determining the reasonableness of any costs imposed include: (1) the cost of the equipment and services, and (2) whether there are similar requirements for comparable objects, such as air conditioning units or trash receptacles. For example, restrictions cannot require that expensive landscaping screen relatively unobtrusive DBS antennas. A requirement to paint an antenna so that it blends into the background against which it is mounted would likely be acceptable, provided it will not interfere with reception or impose unreasonable costs.

**Q: What restrictions prevent a viewer from receiving an acceptable quality signal?**

A: For antennas designed to receive analog signals, such as TVBS, a requirement that an antenna be located where reception would be impossible or substantially degraded is prohibited by the rule. However, a regulation requiring that antennas be placed where they are not visible from the street would be permissible if this placement does not prevent reception of an acceptable quality signal or impose unreasonable expense or delay. For example, if installing an antenna in the rear of the house costs significantly more than installation on the side of the house, then such a requirement would be prohibited. If, however, installation in the rear of the house does not impose unreasonable expense or delay or preclude reception of an acceptable quality signal, then the restriction is permissible and the viewer must comply.

The acceptable quality signal standard is different for devices designed to receive digital signals, such as DBS antennas, digital MMDS antennas, digital television ("DTV") antennas, and digital fixed wireless antennas. For a digital antenna to receive or transmit an acceptable quality signal, the antenna must be installed where it has an unobstructed, direct view of the satellite or other device from which signals are received or to which signals are to be transmitted. Unlike analog antennas, digital antennas, even in the presence of sufficient over-the-air signal strength, will at times provide no picture or sound unless they are placed and oriented properly.

**Q: Are all restrictions prohibited?**

A: No, many restrictions are permitted. Clearly-defined, legitimate safety restrictions are permitted even if they impair installation, maintenance or use provided they are necessary to protect public safety and are no more burdensome than necessary to ensure safety. Examples of valid safety restrictions include fire codes preventing people from installing antennas on fire escapes; restrictions requiring that a person not place an antenna within a certain distance from a power line; and installation requirements that describe the proper method to secure an antenna. The safety reason for the restriction must be written in the text, preamble or legislative history of the restriction, or in a document that is readily available to antenna users, so that a person wanting to install an antenna knows what restrictions apply. Safety restrictions cannot discriminate between objects that are comparable in size and weight and pose the same or a similar safety risk as the antenna that is being restricted.

Restrictions necessary for historic preservation may also be permitted even if they impair installation, maintenance or use of the antenna. To qualify for this exemption, the property may be any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places. In addition, restrictions necessary for historic preservation must be no more burdensome than necessary to accomplish the historic preservation goal. They must also be imposed and enforced in a non-discriminatory manner, as

compared to other modern structures that are comparable in size and weight and to which local regulation would normally apply.

**Q: How does the rule apply to restrictions on radiofrequency (RF) exposure from antennas that have the capability to transmit signals?**

A: All transmitters regulated by the Commission, including the customer-end fixed wireless antennas (either satellite or terrestrial) covered under the amended rule, are required to meet the applicable Commission guidelines regarding RF exposure limits. The limits established in the guidelines are designed to protect the public health with a large margin of safety. These limits have been endorsed by federal health and safety agencies, such as the Environmental Protection Agency and the Food and Drug Administration. The Commission requires that providers of fixed wireless service exercise reasonable care to protect users and the public from RF exposure in excess of the Commission's limits. In addition, as a condition of invoking protection under the rule from government, landlord, and association restrictions, a provider of fixed wireless service must ensure that customer-end antennas are labeled to give notice of potential RF safety hazards posed by these antennas.

It is recommended that antennas that both receive and transmit signals be installed by professional personnel to maximize effectiveness and minimize the possibility that the antenna will be placed in a location that is likely to expose subscribers or other persons to the transmit signal at close proximity and for an extended period of time. In general, associations, landlords, local governments and other restricting entities may not require professional installation for receive-only antennas, such as one-way DBS satellite dishes. However, local governments, associations, and property owners may require professional installation for **transmitting** antennas based on the safety exception to the rule. Such safety requirements must be: (1) clearly defined; (2) based on a legitimate safety objective (such as bona fide concerns about RF radiation) which is articulated in the restriction or readily available to antenna users; (3) applied in a non-discriminatory manner; and (4) no more burdensome than necessary to achieve the articulated objectives.

For additional information about the Commission's RF exposure limits, please visit <http://www.fcc.gov/oet/rfsafety> or call the RF Safety Information Line at 202-418-2464.

**Q: Whose antenna restrictions are prohibited?**

A: The rule applies to restrictions imposed by local governments, including zoning, land-use or building regulations; by homeowner, townhome, condominium or cooperative association rules, including deed restrictions, covenants, by-laws and similar restrictions; and by manufactured housing (mobile home) park owners and landlords, including lease restrictions. The rule only applies to restrictions on property where the viewer has an ownership or leasehold interest and exclusive use or control.

**Q: If I live in a condominium or an apartment building, does this rule apply to me?**

A: The rule applies to antenna users who live in a multiple dwelling unit building, such as a condominium or apartment building, if the antenna user has an exclusive use area in which to install the antenna. "Exclusive use" means an area of the property that only you, and persons you permit, may enter and use to the exclusion of other residents. For example, your condominium or apartment may include a balcony, terrace, deck or patio that only you can use, and the rule applies to these areas. The rule does not apply to common areas, such as the roof, the hallways, the walkways or the exterior walls of a condominium or apartment building. Restrictions on antennas installed in these common areas are not covered by the Commission's rule. For example, the rule would **not** apply to prohibit restrictions that prevent drilling through the exterior wall of a condominium or rental unit.

**Q: Does the rule apply to condominiums or apartment buildings if the antenna is installed so that it hangs over or protrudes beyond the balcony railing or patio wall?**

A: No. The rule does not prohibit restrictions on antennas installed beyond the balcony or patio of a condominium or apartment unit if such installation is in, on, or over a common area. An antenna that extends out beyond the balcony or patio is usually considered to be in a common area that is not within the scope of the rule. Therefore, the rule does not apply to a condominium or rental apartment unit unless the antenna is installed wholly within the exclusive use area, such as the balcony or patio.

**Q: Does the fact that management or the association has the right to enter these areas mean that the resident does not have exclusive use?**

A: No. The fact that the building management or the association may enter an area for the purpose of inspection and/or repair does not mean that the resident does not have exclusive use of that area. Likewise, if the landlord or association regulates other uses of the exclusive use area (e.g., banning grills on balconies), that does not affect the viewer's rights under the Commission's rule. This rule permits persons to install antennas on property over which the person has *either* exclusive use *or* exclusive control. Note, too, that nothing in this rule changes the landlord's or association's right to regulate use of exclusive use areas for other purposes. For example, if the lease prohibits antennas and flags on balconies, only the prohibition of antennas is eliminated by this rule; flags would still be prohibited.

**Q: Does the rule apply to residents of rental property?**

A: Yes. Effective January 22, 1999, renters may install antennas within their leasehold, which means inside the dwelling or on outdoor areas that are part of the tenant's leased space and which are under the exclusive use or control of the tenant. Typically, for apartments, these areas include balconies, balcony railings, and terraces. For rented single family homes or manufactured homes which sit on

rented property, these areas include the home itself and patios, yards, gardens or other similar areas. If renters do not have access to these outside areas, the tenant may install the antenna inside the rental unit. Renters are not required to obtain the consent of the landlord prior to installing an antenna in these areas. The rule does not apply to common areas, such as the roof or the exterior walls of an apartment building. Generally, balconies or patios that are shared with other people or are accessible from other units are not considered to be exclusive use areas.

**Q: Are there restrictions that may be placed on residents of rental property?**

A: Yes. A restriction necessary to prevent damage to leased property may be reasonable. For example, tenants could be prohibited from drilling holes through exterior walls or through the roof. However, a restriction designed to prevent ordinary wear and tear (*e.g.*, marks, scratches, and minor damage to carpets, walls and draperies) would likely not be reasonable provided the antenna is installed wholly within the antenna user's own exclusive use area.

In addition, rental property is subject to the same protection and exceptions to the rule as owned property. Thus, a landlord may impose other types of restrictions that do not impair installation, maintenance or use under the rule. The landlord may also impose restrictions necessary for safety or historic preservation.

**Q: If I live in a condominium, cooperative, or other type of residence where certain areas have been designated as "common," do these rules apply to me?**

A: The rules apply to residents of these types of buildings, but the rules do not permit you to install an antenna on a common area, such as a walkway, hallway, community garden, exterior wall or the roof. However, you may install the antenna wholly within a balcony, deck, patio, or other area where you have exclusive use.

Drilling through an exterior wall, *e.g.* to run the cable from the patio into the unit, is generally not within the protection of the rule because the exterior wall is generally a common element. You may wish to check with your retailer or installer for advice on how to install the antenna without drilling a hole. Alternatively, your landlord or association may grant permission for you to drill such a hole. The Commission's rules generally do not cover installations if you drill through a common element.

**Q: If my association, building management, landlord, or property owner provides a central antenna, may I install an individual antenna?**

A: Generally, the availability of a central antenna may allow the association, landlord, property owner, or other management entity to restrict the installation by individuals of antennas otherwise protected by the rule. Restrictions based on the availability of a central antenna will generally be permissible provided that:

(1) the person receives the particular video programming or fixed wireless service that the person desires and could receive with an individual antenna covered under the rule (e.g., the person would be entitled to receive service from a specific provider, not simply a provider selected by the association); (2) the signal quality of transmission to and from the person's home using the central antenna is as good as, or better than, than the quality the person could receive or transmit with an individual antenna covered by the rule; (3) the costs associated with the use of the central antenna are not greater than the costs of installation, maintenance and use of an individual antenna covered under the rule; and (4) the requirement to use the central antenna instead of an individual antenna does not unreasonably delay the viewer's ability to receive video programming or fixed wireless services.

**Q: May the association, landlord, building management or property owner restrict the installation of an individual antenna because a central antenna will be available in the future?**

A: It is not the intent of the Commission to deter or unreasonably delay the installation of individual antennas because a central antenna may become available. However, persons could be required to remove individual antennas once a central antenna is available if the cost of removal is paid by the landlord or association and the user is reimbursed for the value of the antenna. Further, an individual who wants video programming or fixed wireless services other than what is available through the central antenna should not be unreasonably delayed in obtaining the desired programming or services either through modifications to the central antenna, installation of an additional central antenna, or by using an individual antenna.

**Q: I live in a townhome community. Am I covered by the FCC rule?**

A: Yes. If you own the whole townhouse, including the walls and the roof and the land under the building, then the rule applies just as it does for a single family home, and you may be able to put the antenna on the roof, the exterior wall, the backyard or any other place that is part of what you own. If the townhouse is a condominium, then the rule applies as it does for any other type of condominium, which means it applies only where you have an exclusive use area. If it is a condominium townhouse, you probably cannot use the roof, the chimney, or the exterior walls unless the condominium association gives you permission. You may want to check your ownership documents to determine what areas are owned by you or are reserved for your exclusive use.

**Q: I live in a condominium with a balcony, but I cannot receive a signal from the satellite because my balcony faces north. Can I use the roof?**

A: No. The roof of a condominium is generally a common area, not an area reserved for an individual's exclusive use. If the roof is a common area, you may not use it unless the condominium association gives you permission. The condominium is not obligated to provide a place for you to install an antenna if you do not have an exclusive use area.

**Q: I live in a mobile home that I own but it is located in a park where I rent the lot. Am I covered by the FCC rule?**

A: Yes. The rule applies if you install the antenna anywhere on the mobile or manufactured home that is owned by you. The rule also applies to antennas installed on the lot or pad that you rent, as well as to other areas that are under your exclusive use and control. However, the rule does not apply if you want to install the antenna in a common area or other area outside of what you rent.

**Q: I want a conventional "stick" antenna to receive a distant over-the air television signal. Does the rule apply to me?**

A: No. The rule does not apply to television antennas used to receive a distant signal.

**Q: I want to install an antenna for broadcast radio or amateur radio. Does the rule apply to me?**

A: No. The rule does not apply to antennas used for AM/FM radio, amateur ("ham") radio, Citizen's Band ("CB") radio or Digital Audio Radio Services ("DARS").

**Q: I want to install an antenna to access the Internet. Does the rule apply to me?**

A: Yes. Antennas designed to receive and/or transmit data services, including Internet access, are included in the rule.

**Q: Does this mean that I can install an antenna that will be used for voice and data services even though it does not provide video transmissions?**

A: Yes. The most recent amendment expands the rule and permits you to install an antenna that will be used to transmit and/or receive voice and data services, except as noted above. The rule will also continue to cover antennas used to receive video programming.

**Q: I have already installed an antenna that is used solely for the purpose of receiving video programming. Am I affected by this amendment?**

A: Persons who have already installed, or who plan to install, an antenna designed to receive only video programming are not affected by this amendment. The purpose of the amendment is to permit persons to install antennas that may be used for voice and data services, as well as for video programming services. The rules concerning restrictions on the placement of video antennas will apply equally to antennas that are used for voice and data services.

**Q: I'm a board member of a homeowners' association, and we want to revise our restrictions so that they will comply with the FCC rule. Do you have guidelines you can send me?**

A: We do not have sample guidelines because every community is different. We can send you the rule and the relevant orders, which will give you general guidance. (See list of documents at the [end of this factsheet](#). Some communities have written restrictions that provide a prioritized list of placement preferences so that residents can see where the association wants them to install the antenna. The residents should comply with the placement preferences provided the preferred placement does not impose unreasonable delay or expense or preclude reception of an acceptable quality signal.

**Q: What restrictions are permitted if the antenna must be on a very tall mast to get a signal?**

A: If you have an exclusive use area that is covered by the rule and need to put your antenna on a mast, the local government, community association or landlord may require you to apply for a permit for safety reasons if the mast extends more than 12 feet above the roofline. If you meet the safety requirements, the permit should be granted. Note that the Commission's rule only applies to antennas and masts installed wholly within the antenna user's exclusive use area. Masts that extend beyond the exclusive use area are outside the scope of the rule. For installations on single-family homes, the "exclusive use area" generally would be anywhere on the home or lot and the mast height provision is usually most relevant in these situations. For example, if a homeowner needs to install an antenna on a mast that is more than 12 feet taller than the roof of the home, the homeowners' association or local zoning authority may require a permit to ensure the safety of such an installation, but may not prohibit the installation unless there is no way to install it safely. On the other hand, if the owner of a condominium in a building with multiple dwelling units needs to put the antenna on a mast that extends beyond the balcony boundaries, such installation would generally be outside the scope and protection of the rule, and the condominium association may impose any restrictions it wishes (including an outright prohibition) because the Commission rule does not apply in this situation.

**Q: Does the rule apply to commercial property or only residential property?**

A: Nothing in the rule excludes antennas installed on commercial property. The rule applies to property used for commercial purposes in the same way it applies to residential property.

**Q: What can a local government, association, or consumer do if there is a dispute over whether a particular restriction is valid?**

A: Restrictions that impair installation, maintenance or use of the antennas covered by the rule are preempted (unenforceable) unless they are no more burdensome than necessary for the articulated legitimate safety purpose or for preservation of a

designated or eligible historic site or district. If a person believes a restriction is preempted, but the local government, community association, or landlord disagrees, either the person or the restricting entity may file a Petition for Declaratory Ruling with the FCC or a court of competent jurisdiction. We encourage parties to attempt to resolve disputes prior to filing a petition. Often calling the FCC for information about how the rule works and applies in a particular situation can help to resolve the dispute. If a local government, community association, or landlord acknowledges that its restriction impairs installation, maintenance, or use and is preempted under the rule but believes it can demonstrate "highly specialized or unusual" concerns; the restricting entity may apply to the Commission for a waiver of the rule.

**Q: What is the procedure for filing a petition or requesting a waiver at the Commission?**

A: There is no special form for a petition. You may simply describe the facts, including the specific restriction(s) that you wish to challenge. If possible, attach a copy of the restriction(s) and any relevant correspondence. If this is not possible, be sure to include the exact language of the restriction in question with the petition. General or hypothetical questions about the application or interpretation of the rule cannot be accepted as petitions.

Petitions for declaratory rulings and waivers must be served on all interested parties. For example, if a homeowners' association files a petition seeking a declaratory ruling that its restriction is not preempted and is seeking to enforce the restriction against a specific resident, service must be made on that specific resident. The homeowners' association will not be required to serve all other members of the association, but must provide reasonable, constructive notice of the proceeding to other residents whose interests foreseeably may be affected. This may be accomplished, for example, by placing notices in residents' mailboxes, by placing a notice on a community bulletin board, or by placing the notice in an association newsletter. If a local government seeks a declaratory ruling or a waiver from the Commission, the local government must take steps to afford reasonable, constructive notice to residents in its jurisdiction (*e.g.*, by placing a notice in a local newspaper of general circulation). Proof of constructive notice must be provided with a petition. In this regard, the petitioner should provide a copy of the notice and an explanation of where the notice was placed and how many people the notice reasonably might have reached.

Finally, if a person files a petition or lawsuit challenging a local government's ordinance, an association's restriction, or a landlord's lease, the person must serve the local government, association or landlord, as appropriate. You must include a "proof of service" with your petition. Generally, the "proof of service" is a statement indicating that on the same day that your petition was sent to the Commission, you provided a copy of your petition (and any attachments) to the person or entity that is seeking to enforce the antenna restriction. The proof of service should give the name and address of the parties served, the date served, and the method of service used (*e.g.*, regular mail, personal service, certified mail).

All allegations of fact contained in petitions and related pleadings before the Commission must be supported by an affidavit signed by one or more persons who have actual knowledge of such facts. You must send an original and two copies of the petition and all attachments to: Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, Attention: Cable Services Bureau.

**Q: Can I continue to use my antenna while the petition or waiver request is pending?**

A: Yes, unless the restriction being challenged or for which a waiver is sought is necessary for reasons of safety or historic preservation. Otherwise, the restriction cannot be enforced while the petition is pending.

**Q: Who is responsible for showing that a restriction is enforceable?**

A: When a conflict arises about whether a restriction is valid, the local government, community association, property owner, or management entity that is trying to enforce the restriction has the burden of proving that the restriction is valid. This means that no matter who questions the validity of the restriction, the burden will always be on the entity seeking to enforce the restriction to prove that the restriction is permitted under the rule or that it qualifies for a waiver.

**Q: Can I be fined and required to remove my antenna immediately if the Commission determines that a restriction is valid?**

A: If the Commission determines that the restriction is valid, you will have a minimum of 21 days to comply with this ruling. If you remove your antenna during this period, in most cases you cannot be fined. However, this 21-day grace period does not apply if the FCC rule does not apply to your installation (for example, if the antenna is installed on a condominium general common element or hanging outside beyond an apartment balcony). If the FCC rule does not apply at all in your case, the 21-day grace period does not apply.

**Q: Who do I call if my town, community association or landlord is enforcing an invalid restriction?**

A: Call the Federal Communications Commission at (888) CALLFCC (888-225-5322), which is a toll-free number, or 202-418-7096, which is not toll-free. Some assistance may also be available from the direct broadcast satellite company, multichannel multipoint distribution service, television broadcast station, or fixed wireless company whose service is desired.

**GUIDANCE ON FILING A PETITION**

**Q: What are the procedural requirements for filing a Petition for Declaratory Ruling or Waiver with the Commission?**

A: There is no special form for a petition. You may simply describe the facts, including the specific restriction(s) that you wish to challenge. If possible, attach a copy of the restriction(s) and any relevant correspondence. If this is not possible, be sure to include the exact language of the restriction in question with the petition. General or hypothetical questions about the application or interpretation of the rule cannot be accepted as petitions.

Petitions for declaratory rulings and waivers must be served on all interested parties. An entity seeking to impose or maintain a restriction must include with its petition a proof of service that it has served the affected residents. Similarly, an antenna user seeking to challenge the permissibility of a restriction must include with the petition a proof of service that the antenna user has served the restricting entity with a copy of the Petition.

If you are an antenna user, you must serve a copy of the Petition on the entity seeking to enforce the restriction (*i.e.*, the local government, community association or landlord). If you are a local government, community association or landlord, you must serve a copy of the Petition on the residents in the community who currently have or wish to install antennas that will be affected by the restriction your Petition seeks to maintain. For example, if a homeowners' association files a petition seeking a declaratory ruling that its restriction is not preempted and is seeking to enforce the restriction against a specific resident, service must be made on that specific resident. The homeowners' association will not be required to serve all other members of the association, but must provide reasonable, constructive notice of the proceeding to other residents whose interests may foreseeably be affected. This may be accomplished, for example, by placing notices in residents' mailboxes, by placing a notice on a community bulletin board, or by placing the notice in an association newsletter. If a local government seeks a declaratory ruling or a waiver from the Commission, the local government must take steps to afford reasonable, constructive notice to residents in its jurisdiction (*e.g.*, by placing a notice in a local newspaper of general circulation). Proof of constructive notice must be provided with a petition. In this regard, the petitioner should provide a copy of the notice

and an explanation of where the notice was placed and how many people the notice might reasonably have reached.

Finally, if a person files a petition or lawsuit challenging a local government's ordinance, an association's restriction, or a landlord's lease, the person must serve the local government, association or landlord, as appropriate. You must include a "proof of service" with your petition. Generally, the "proof of service" is a statement indicating that on the same day that your petition was sent to the Commission, you provided a copy of your petition (and any attachments) to the person or entity that is seeking to enforce the antenna restriction. The proof of service should give the name and address of the parties served, the date served, and the method of service used (*e.g.*, regular mail, personal service, certified mail).

If you wish to file either a Petition for Declaratory Ruling or a Petition for Waiver pursuant to the Commission's Over-the-Air Reception Devices Rule (47 CFR Section 1.4000), you must file an original and two copies of your Petition on the following address:

**Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
Attn: Cable Services Bureau**

**Q: What are the substantive requirements for filing a petition for waiver or declaratory ruling?**

A: To file a Petition for Waiver, follow the requirements in Section 1.4000(c) of the rule. The local government, community association or landlord requesting the waiver must demonstrate "local concerns of a highly specialized or unusual nature." The petition must also specify the restriction for which the waiver is sought, or the petition will not be considered.

To file a Petition for Declaratory Ruling, follow the requirements set forth in Section 1.4000(d) of the rule. Set out the restriction in question so that we can determine whether it is permissible or prohibited under the rule. In a Petition for Declaratory Ruling, the burden of demonstrating that a particular restriction complies with the rule is on the entity seeking to impose the restriction (*e.g.*, the local government, community association or landlord).

While a petition for declaratory ruling or waiver is pending with the Commission or a court, the restriction in question may not be enforced unless it is necessary for safety or historic preservation. No fines or penalties, including attorneys fees, may be imposed by the restricting entity while a petition is pending. If the restriction is found to be permissible, the antenna users subject to the ruling will generally have at least 21 days in which to comply before a fine or penalty is imposed.

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**Reading #4: At Your Service***Common Ground*, September/October 2007

By: Molly Brennan

**Five tips for building—and maintaining—successful relationships with your professional providers.**

The honeymoon is over. The giddy excitement has subsided. Your relationship is comfortable, but growing routine. Now, you and your service provider are left to figure out how to keep the flame burning.

A soured relationship with any of the assorted landscapers, accountants, community managers, bankers, roofers, insurance specialists and others who serve your community could spell more than heartbreak. It could incite a resident rebellion and lead to financial ruin. So, these bonds need to be nurtured and taken seriously. Take your contractors for granted and pretty soon they'll be taking you for granted.

Through interviews with homeowners, managers (who have the unique perspective of being both the one hired and the one doing the hiring) and a wide variety of contractors and professional service providers, we've identified five keys for building and maintaining strong relationships. It's not rocket science, but it does involve the effort of both parties. Read on to learn how to be lucky in love, or at least keep the relationship intact.

**1. Make your expectations clear.**

First impressions matter. The first impression—good or bad—is usually a lasting one. For many vendors, the first impression of a community association comes via the "request for proposal," or RFP. RFPs that are informal, sloppy or incomplete are a red flag for many contractors and professional service providers. In their eyes, it indicates the association either doesn't know what it wants, and so the contractor is destined to fail, or the association is not organized enough to prepare a formal RFP, which could indicate a lack of professionalism and poor management.

"From 19 years of experience, I've learned that if I see a less-than-acceptable RFP, it's best to steer clear," says James Rademacher, CEO of Rezkom Enterprises, Inc., an Ocean, N.J.-based maintenance services company.

But losing a quality vendor over something as basic as an RFP is both irresponsible and totally avoidable, Rademacher says, adding that many busy managers and volunteer board members simply underestimate the importance of a clear bid request. "Most managers I talk to say, 'I didn't know this bothered the vendors,'" he notes.

So Rademacher, who also serves as vice president of the CAI New Jersey chapter and a national CAI trustee, organized a series of educational seminars on the bid

process for managers across New Jersey. Preparing a detailed RFP isn't difficult, but it does take time.

First, RFPs should always be in writing. "We've gotten requests for proposals that come via phone, and I won't even entertain that," he says. "There are simply too many variables to consider."

Then, at the very least, an RFP should contain:

- Detailed scope of work
- Contract period—starting and ending dates
- Payment terms
- Insurance requirements
- Site map or plan
- Contact information

And though it may seem cumbersome to put together an RFP—especially when you're seeking a bid from a vendor who is already familiar with the community, manager and board—it pays to put in the effort on the front end, says Christi Wells, cmca, a vice president at Community Association Banc & CondoCerts in Allen, Texas, and a former community manager. "Expectations must be clear and comprehended by all parties," she says. "Don't assume anything when it comes to what services are to be provided for the price of the contract. As a contractor will tell you, if it wasn't on the plans or in the scope of work, don't expect it to happen."

A good bid is detailed, customized and time consuming to prepare, which is why associations should be respectful of the effort vendors put into them, says David Caplan, CMCA, AMS, PCAM, CEO of Community Association Management, which manages about 40 communities in the Stevenson, Md. area. "Sometimes a community will just be looking for a budget number. You must tell the vendor this and not waste their time," advises Caplan, who sits on CAI's Association of Professional Community Managers Board. "The next time, the price you get may be higher than it should be since the vendor might not think you're asking for real."

There's nothing wrong with doing a little comparison shopping, since most associations require three bids per project; but you need to be truthful, says Diana Stiller, PCAM, a board member of the CAI Greater Los Angeles chapter and general manager of the Century Hill Association, a luxury, single-family home community in Los Angeles. If your board members are asking for bids just because they are fishing, let the vendor know that you are researching rather than hard bidding, she advises. "The contractor may decline to bid under those circumstances. But having been honest, you will be able to go back to the contractor in the future," she says. "Vendors and contractors who feel 'used' will decline to bid in the future."

Even if you give a bid fair consideration, but go with a different contractor or service provider, show the vendor professional courtesy, says Joanne Pena, CMCA, AMS, PCAM, a manager with Horizon Management Company in Los Angeles. "I will thank the vendors for taking the time to submit a bid and let them know why theirs

was not accepted, whether it be their price, presentation, lack of references, whatever," she says. "I have found that most vendors appreciate this kind of feedback."

## **2. Monitor, but don't micromanage.**

For the most part, board members are dedicated and hard-working advocates for their communities. They have a fiduciary responsibility to act in the best interest of their communities and most take that responsibility very seriously. After all, it's their investment on the line, too.

That fine-tooth-comb approach usually serves the community well, but it can lead to trouble with contractors and professional service providers. While board members know what's in the best interest of their community, they usually don't know the ins and outs of lien foreclosure, pool maintenance or reserve analysis and may question the pricing, timeline or nature of a project. Understanding the limitations and scope of their own knowledge and abilities, and knowing when to step back and let contractors and professional service providers take the lead is key to both successful relationships, say seasoned board members.

Take the manager-board relationship, for instance. In most mid- and large-scale communities, the day-to-day oversight of contractors and professional service providers falls on the manager. Many managers have some professional education, and most have experience dealing with a wide variety of professional service providers. A strong board knows how to tap that knowledge and experience, without relinquishing decision-making authority.

Such is the case at The Grande at Colts Neck Association in Colts Neck, N.J., says Jack McGrath, a member of CAI's Board of Trustees and chair of CAI's Community Association Volunteers Committee. There, the board frequently solicits the manager's advice on preferred vendors, RFPs and contractor relations. What makes her advice so valuable and trusted, says McGrath, is that she offers it as an opinion—not a final say on the matter.

"She'll say, 'based on my experience, this is what I think,'" McGrath says. "Nine times out of 10, we're going to follow her advice. Otherwise, why do you have her?"

Offering advice on vendors and RFPs is one thing. Isolating the board from vendors completely is another, and it's something managers and board members need to avoid. That's because too little board involvement raises concerns for many vendors, Rademacher says. As part of all large RFPs, Rademacher requests a meeting with the association's board. "If I'm going to sign an \$80,000-a-year contract, I want to make sure the board is on the same page as the manager," he says.

Similarly, Michael Nagle, a Columbia, Md.-based community association attorney, requests a meeting with the board president whenever he senses the manager is operating too independently. "When push comes to shove, [the manager] is not the

client to whom we owe a duty," he says.

### **3. Establish clear lines of communication.**

Staying in touch with professional service providers and contractors is sometimes unavoidable—if a painter is in your hall every day for a week, it's easy to keep an eye on the project. But many times, contractors work independently, without direct supervision, and communication must be sought. Making the extra effort to communicate with service providers, however, will likely pay off since communication is the most important component of any relationship.

Most managers and board presidents now give—and request—cell phone numbers and after-hours contact information. But even with 24-hour accessibility, nothing beats a face-to-face meeting. Caplan schedules regular lunch meetings with vendors "to see how our overall relationship is going." Ed Coogan, an account executive with Engle-Hambright & Davies, a broker and risk management firm in Lancaster, Pa., visits clients on a quarterly basis.

At Charleston Place Association, a condominium community in Aurora, Colo., the contract for maintenance services stipulates that the contractor provide a monthly report to the board—either in writing or in person at board meetings, says former board president Rita Guthrie. And at the Windsong Condominiums in Denver, association President Michael Rouse, cmca, routinely invites vendors to attend homeowner meetings. "Residents with project-related technical questions can ask the vendors directly," says Rouse, who is also a board member of CAI's Rocky Mountain chapter. "This reduces the amount of time our manager needs to spend addressing and researching questions for our homeowners."

This is a good example of open, but controlled communication. Too many lines of communication can be overwhelming and counterproductive. Whether the contractor answers to a manager or the board president, it's imperative a single point of contact be established, says Denise Bower, CMCA, AMS, PCAM, vice president of Community Management, Inc., in Portland, Ore. This is especially true of on-site service providers, such as landscapers and security and maintenance providers, who are often approached by homeowners with personal requests.

"You basically have as many bosses as there are owners—plus their children and spouses, too! [Contractors] have to know who to listen to, and when to go to the community manager and say, 'Hey, Peter Smith is asking us to research this bylaw or take out this bush. What do you want us to do?'" Bower says. "We try to have most communications go through the management company, or at least let the contractor know who his one contact person is."

### **4. Build and maintain trust.**

"Establish trust" sounds like one of those platitudes we're hoping to avoid in this article. But, just as with any relationship, mutual trust and respect are key components. Without them, the relationship will deteriorate and eventually end. For

associations, broken trust means either the loss of a quality service provider or, worse, poor service from a contractor.

In many communities, the manager is the public face of the association, and so it falls to him or her to build and maintain trust. There are the obvious good-business practices that convey professionalism and help gain trust: be where you say you're going to be; do what you say you're going to do.

But that alone won't gain a contractor's trust; you have to convey professional respect, says Jolene Macrae, cmca, director of operations for Colonial Property Management in Mesquite, Nev. And you do that, she explains, by treating the contractor as a partner, not a hired hand. "It is extremely important to remember that you are all a team in this endeavor. If you make the vendor feel like a team member instead of an outsider, you will have a better working relationship."

"A dream client would be the business that looks at us as a business partner, not a line item on their balance sheet," Coogan agrees.

Respect also means deferring to the contractor's know-how. "Remember that your vendor was hired because of his expertise," Macrae says. "When you ask him something, tell him you trust his opinion—he's the expert, what does he think?" Then, you have cemented the bonds of trust and respect."

At the same time, don't be completely hands-off, and show some interest in the service or project, Stiller recommends. "Learn as much as you can about the basics of each trade and profession you are using," she says. "The more interest and understanding you can show, the more dedicated that person will become to assisting you."

And remember: trust is a two-way street. Break trust with your vendors, either by not adhering to contract terms or not showing professional respect, and you could be the jilted partner. "I believe in firing your customers. Some situations are not worth the trouble," says Debbie Yeats, owner of Color Innovations Painting in Forth Worth, Texas, and a past president of CAI's Dallas-Fort Worth chapter. "If a customer is not responding to your needs, is difficult to work with, or has unreasonable expectations, sometimes it's best to move on."

Over the years, Pena has fired three associations. The relationships were doomed, she says, because the board members failed to take her advice or that of legal counsel. They "micromanaged their service providers, held them to unreasonable standards, beat them down in price, or refused to pay them in a timely manner."

In fact, failing to pay on time is one of the fastest ways to lose trust. The Grande at Colts Neck lost a good vendor due to problems with slow payment. It was the result of a mix-up between the manager and the accounting department of the management company, McGrath says. The association approached the vendor recently about a new RFP and offered assurances that the payment delays had been addressed. "Hopefully he'll come back," McGrath says.

You can sometimes combat problems like that and build a reservoir of good faith by giving credit where credit is due, says Rouse, the association president from Denver. If a contractor does a great job, let him know. "We recognize our vendors for the work they do by giving them awards or certificates and having vendor luncheons," he says. "Everyone likes to be recognized and appreciated," Stiller seconds.

### **5. Keep things in perspective.**

No relationship is perfect, and even healthy relationships occasionally encounter bumps in the road. Distinguishing between minor problems and relationship-ending issues is key to long-term success, says Lee Thompson, cmca, ams, president of T.M.C. Realty & Management, Inc., in Las Vegas.

For example, when complaints or problems arise, first try to address them in a proactive manner, Thompson suggests. It may be that the vendor doesn't understand what is expected, or he or she may be unaware that performance has slipped. "Advise your vendor what the issues are and work together to resolve them," he says. "We have an in-person review or conference and some clearly defined benchmarks for performance when things are going badly. If we have to move on to another vendor, at least we will have tried to do our part in making the relationship work."

And remember to cut your vendors some slack, advises Marilyn Brainard, a member of the CAI Community Association Volunteers Committee and past president of the master community association of Wingfield Springs in Sparks, Nev. "Don't shop around if one little thing goes wrong," she says. "You have to give people a chance to get used to a job."

Even if the service provider has been on the job for years, mistakes happen and you need to keep things in perspective, says Macrae. The longtime reserve specialist for one of her communities once submitted a reserve study—on the wrong association. Rather than take him to task for this time-consuming and time-wasting mistake, Macrae decided this trusted and usually reliable vendor had made an honest mistake. "I jokingly called him and teased him," she recalls. "We laughed about it and he corrected the situation in a matter of days."

Because the reserve specialist quickly accepted culpability and rectified the situation, he put Macrae's worries to rest. When a contractor is defensive or evasive about a mistake, however, that's a more serious problem, Caplan says. "All vendors make mistakes, just like all managers make mistakes," he says. "Those contractors that acknowledge their mistakes and correct them without delaying or griping are the contractors we work best with."

There are times, of course, when the error is too grievous or the damage too extensive and the relationship must be ended. When that's the case, be polite but pointed, Macrae advises. "If you must terminate, be polite in your letter of termination, and tell him—personally—why," Macrae recommends. If you explain

why the contract was terminated and offer a clear explanation of the shortcomings or problems, the contractor will have an opportunity to address and correct them. Down the road, the new and improved vendor might be someone you'll want to do business with, Macrae says.

Long term doesn't always mean healthy. Change can be disruptive, costly and distracting to community associations. That is why long-term relationships are so valued, and why we've dedicated this space to tips for building lasting relationships.

But just because a relationship has endured doesn't mean it's healthy, cautions Jerry Boswell, past treasurer and president of a subassociation in the Highlands Ranch master association in Highlands Ranch, Colo. "It's not always a positive thing to have a long relationship with a provider because that can indicate that the association is too lax and has ceded too much authority to the provider," he says. Boswell, who also serves on CAI's Community Association Volunteers Committee, recommends seeking RFPs every three years. It keeps service providers on their toes, he says, and ensures their rates are in line with the current marketplace. "Even if it's a good provider, it's smart to do them [RFPs] every few years."

A vendor you work with today may bear little resemblance to the company you hired five years ago. Staff, ownership and business philosophy can change, which is why long-term relationships don't necessarily translate to long-term partnerships, Pena says. "I have ended relationships with vendors after using them for years because of changes in personnel, quality of workmanship or pricing," she notes. "We must represent the best interests of our associations, and sometimes that means going out for a competitive bid even though everything is status quo."

## Reading #5: The Players



### The Association

The association operates as a quasi-governmental and quasi-corporate body in the sense that it is governed by an elected board that represents the interests of its members. Transition begins very early, with the establishment of the association as an entity governed by representatives initially appointed by the developer. Members of the association become actively involved with the transition process after the first election meeting at which typically one or two members of the association are elected to a board of directors.

Following the initial election, the owner members of the board must become familiar with the governing process as outlined in the governing documents of the association and perhaps mandated by state statute. While at this stage they typically represent a minority interest on the board, they nonetheless are responsible as board members for conducting business on behalf of those they represent—the members of the association. Their responsibility includes hiring professional advisors, bidding and awarding contracts for services provided to the association, establishing and enforcing rules and restrictions as permitted by the governing documents, and ensuring the proper operation and administration of the association. At this point in the transition process, the association begins to take on a profile or personality, because rules and regulations, policies and procedures, and architectural control issues begin to evolve with the input and influence of the owner board members.

Further into the development process (typically after 75 percent of the unit/lots to be built have been conveyed to owners) another election is held. Following this election, owners will represent a majority interest on the board, with the developer usually maintaining a minority vote (or sometimes a non-voting seat on the board). It is common at this point for the board to begin hiring a professional team to conduct the investigations related to the board's due diligence. This team should include a manager, an independent accounting firm, an attorney, and an engineer, all of whom will play a significant role in the transition process.

The focus of transition at this stage is more specifically on what the developer has provided. The board's responsibility to the association is to ensure that the promises of the developer as outlined in the public offering have been fulfilled. It is important at this juncture to differentiate association issues from owner issues. The board will commonly receive input from owners concerning issues related to their individual unit/lots rather than the common elements. Individual owner issues must

be handled directly by the owners themselves, in conjunction with warranties that have been provided. The board should focus on the common elements, which may consist of parcels of real property, infrastructure, or the right to use certain property.

The best practice is to retain a manager as the first team member because the manager will coordinate the efforts of the other professionals. The manager also can be expected to have valuable input regarding other local professionals that might be most effective in the specific circumstance of the association. When considering professional management, the board will want to consider the incumbent manager hired by the developer or alternative managers in the area. The advantage of retaining the incumbent lies to a large degree in the base of knowledge this manager has regarding issues that have been identified since the beginning of the manager's tenure. The downside of retaining the incumbent rests primarily in the perception that he was hired by the developer and may harbor a continuing affiliation that could cause a conflict of interest. This issue should be examined carefully, inasmuch as it is often a perception as opposed to a reality.

Other professionals that should be considered at this point include an independent accountant, an engineer, and an attorney. Once all of the professionals have been retained, the board might appoint a subcommittee of two or three individuals to deal directly with the manager and other professionals on transition-related matters.

If a subcommittee is appointed, it should have an established structure for regularly reporting back to the board regarding its progress. Once a refined set of reports is established, the full board should review and approve them and submit them to the developer for comment (if the developer no longer serves on the board). From this point forward, the full board should maintain close communication and monitoring of the negotiation process (assuming that issues for developer action have been identified), utilizing its subcommittee and professional advisers to conduct the actual discussions. Once all parties are in agreement as to the resolution of any identified issues, the full board should accept the resolution and execute any necessary documents as provided by legal counsel.

The primary role of the board, therefore, can be summarized as one of reviewing information, directing professional advisers, and making decisions regarding the transition process. These decisions relate not only to construction and accounting matters, but to governance, administrative, and operational issues as well.

### **The Manager**

The professional manager plays a very important role in the transition process, ranging from working with the developer to create a viable, operationally sound association and carefully ensuring a clear delineation between developer and association financial responsibilities to assisting in the education of new board

members with regard to the association's governing process and to coordinating the work of the professional team retained by the board. Heavy reliance should also be placed on the manager to assist in establishing and maintaining timelines for the production of reports, reviewing information, and refining any issues that might be identified.

Perhaps the manager's most critical job is to provide a realistic context for the board that ensures any expectations concerning transition are reasonable. Once again, the transition process includes not only investigating construction issues but also the evolution of the governing process, fine-tuning of rules, regulations, and restrictions, development of architectural control standards, and establishment of administrative policies that will serve the community into the future. A professional manager will be able to analyze the administrative and operating systems of the association and point to what is missing or what can be further fine-tuned. In terms of developer-related issues, the manager should play a key role in providing focus for the association, so a realistic list of concerns can be identified and managed.

One of the first responsibilities of the manager following what is commonly referred to as the "turnover election" to homeowner control, is to make sure that the board has its professional advisers in place to prepare reports regarding the financial and physical health of the association. Remember that the transition of people and roles takes time and is more of a process than an event. For example, don't expect to have all positions replaced by homeowners all at once – build continuity throughout the process. The manager will be familiar with the extent of any potential issues in the community and know other professionals in the area who have experience with transition matters.

The manager consequently will be in a position to recommend several professionals for the board to interview. In this process, it is best to limit candidates being interviewed to a maximum of three for each category—-independent accountant, engineer, and attorney. If desirable, proposals can be solicited from five or six candidates, from which three can be selected for interview. The manager will be able to coordinate this process, so the board can make its choice in an organized and informed atmosphere.

Once the professional team is established, the manager should work with the board and each professional to develop timelines for the production of transition reports. Once established, the manager will monitor progress so the timelines are maintained, and receive the draft reports for distribution to the board, its subcommittee, and the association's legal counsel.

Due to the nature of the manager's responsibility for the day-to-day administration of the association, he will come across a wide variety of issues, some of which may be related to studies being conducted by the engineering and accounting firms. The manager should maintain a list of such issues and include them in any related

investigation that is conducted.

Once the draft engineering report and auditor's report are received, the board or its subcommittee should review it and refine any issues that have been identified. Here again, the manager can provide a valuable service to the association by maintaining realistic expectations and keeping the board or subcommittee focused on the important issues at hand. When final reports are produced and furnished to the developer, the manager will assist in scheduling meetings and discussions, so the process of resolving any identified issues does not become overly protracted.

All in all, the manager is much like an orchestra conductor, bringing together skilled musicians of varying types to produce a symphony that is pleasing to those he represents. This is done by establishing the context, creating the team, coordinating the efforts, refining the result, and resolving the issues.

### **The Approving Authorities**

**At the time that a project is conceived and permitted, the developer should consider arranging for a management company to provide advice as needed. The developer appears before various local, state, and federal agencies to secure the necessary approvals for the design, specifications, and construction practices for the project.**

These agencies are charged with protecting the public interest, which may or may not coincide with the future owners' interests. Generally speaking, a public agency enforces standard codes and specific regulations of the state or local government. These standards protect the "health and welfare" of the community and assure a minimum level of structural integrity. By enforcing these standards, the approving agency is providing minimal representation for the owners' interest.

The project approval process may also include negotiated standards. These standards are not hard and fast; rather they may provide certain concessions or inducements for the developer to proceed as an "essential" community development project. For example, the municipality might grant a developer a lower specification for road construction, trash storage space, or buried utilities, because they are privately owned on the project site. In return, the developer might agree to receive reduced municipal services. The outcome of these negotiations, while favorable to the approving authority and the developer, often is not in the best interest of the future owners. For example, future owners may bear an undue municipal-tax burden for a lower level of public services, or be prohibited from negotiating public assistance for repair of roads that have become public thoroughfares.

During the construction phase, agents of the approving authority charged with the enforcement of codes and standards make periodic inspections of the property to make sure that the project is proceeding in accordance with standards, designs, and specifications. Ultimately, the approving authority will issue a certificate of

occupancy based on these periodic and final inspections. Critical parts of the inspection include, but are not limited to, plumbing, electrical, fire-safety, and energy codes. While code-enforcement inspections can assure that the project meets minimal standards (design approval of the architect's or engineer's plans) and some smaller details (polarity of outlets) they may miss substantial defects (for example, substituted water-service fittings that corrode more rapidly or obstructed eave ventilation that leads to ice dams).

In some jurisdictions, municipal leaders have adopted enabling legislation for planned urban developments. In some cases, the municipality has the power to grant approving-authority status to the developer. The developer then will oversee compliance with codes and, with the municipality, issue certificates of occupancy for occupancy. During transition and discussion of construction defects, the approving authority can be involved as a disinterested party. The certificate of occupancy is an important document. On occasion, owners allege that the approving authority and its agent, the code-enforcement officer or inspector, is negligent for accidentally or willfully overlooking code violations during construction inspections.

In the final analysis, the approving authorities have two substantial effects on the outcome of transition and the community's future well-being. First, through negotiated agreements and concessions, they set the stage for conditions that future owners might consider project shortcomings and defects. Second, diligent code enforcement brings a considerable amount of information to the transition discussion, and has the potential to detect and eliminate faults during construction.

### **The Engineer**

The engineer may be involved in a developing association each step of the way, from the document development phase, through construction, and finally through transition. Common services provided by an engineer include reserve studies, risk management services, pre-closing inspections, design services, consulting/mediation services, transition studies, site and building inspection services, litigation support, design services and specification, and bidding and contract administration services.

Engineers may be called upon during the transition period to help the association assess its physical strength by making certain that all common elements are constructed in general conformance with the design documents and that no defects exist. At the same time, the engineer may make recommendations in regards to the financial strength of the community by preparing a comprehensive reserve study.

Transition studies should include a site and building analysis of all common elements. In the site analysis, visual observations may be performed to determine if the visually observable common elements (for example, grading, drainage, paving, landscaping, lighting and exterior recreational areas) are in general conformance with the design drawings and note what defects or omissions, if any, exist. In the building analysis, field observations may include a review of the

exterior common and limited common elements of all community buildings that the association is responsible for. The field observations should include a review of the interiors of the units at the site, if applicable, to review the installation of the visually observable interior elements.

An experienced engineer should generally adhere to a schedule of services represented in the following chart:

**Phase I**

**Prior to sellout:**

- Reserve study for governing documents & initial reserve budget.
- Other:

**Phase 2**

**During construction:**

- Risk management inspections
- Other:

**Phase 3**

**After completion:**

- Risk management inspections
- Other:

**Phase 4**

**Follow up:**

- Consulting
- Other:

## The Reserve Specialist

Developing associations should rely on qualified Reserve Specialists (RS) to assist them in conducting extensive reserve planning to help establish smooth running communities. The RS designation is awarded to experienced, qualified Reserve Specialists who, through years of specialized experience, can help ensure that associations prepare their reserve budget as accurately as possible. RS designees must meet comprehensive requirements including:

- Preparing at least 30 reserve studies within the past three calendar years
- Holding a bachelors degree in construction management, architecture, or engineering (or equivalent experience and education)
- Complying with strict rules of conduct outlined by the Professional Reserve Specialist Code of Ethics

## The Insurance Agent

The professional insurance agent plays an important role in the establishment of a new community. He may serve the developing association by consulting on risk management issues, providing indemnification of losses, underwriting exposures, or producing certificates of insurance. Agents are knowledgeable in the complexities of risk evaluation, underwriting, and claims management specific to developing community associations.

One of the most important responsibilities of a community association board of directors and its community managers—developing or otherwise—is to secure the protection of the best insurance program possible. Insurance review and placement, however, can be a real challenge for many association boards and their officers. For that reason, managers and their boards should have their insurance policies checked by a community association insurance specialist. They should also seek qualified insurance professionals to help them protect their most valuable investments.

Agents with the Community Insurance and Risk Management Specialist™ (CIRMS™) designation, offered by CAI, can help instill confidence for those charged with establishing nurturing a developing community. The CIRMS designation recognizes a demonstrated high level of competency within the risk management profession.

## The Attorney

Association attorneys typically represent all forms of community associations, including condominiums, planned communities, and cooperatives—in all stages of their development. They offer a full range of legal services to community association clients, including litigation, counseling, document interpretation, drafting and all matters involving the practices of common-interest communities.

In addition to community association practice, association attorneys typically provide general counseling and litigation services, including contracts and commercial law, business and transactional law, insurance defense, collections and



**Reading #6: The Rest of the Team**

*Common Ground*, September/October 2007

Howard A. Goldklang, CPA; Lynn Voorhees, RS; John Smith; Vincent J. Hager, CIRMS

**How do you select your financial team? These guidelines can help.**

When it comes to your association's financial health and your own peace of mind, there's no substitute for using professional expertise to help you preserve and protect your community's assets. The experts you turn to include accountants, bankers, insurance providers and reserve specialists. Their jobs are as interrelated as your finances. The accountant relies on the reserve study to determine the long-term financial health of the association. So does the banker when deciding whether to approve a mortgage for a homebuyer or a loan to the association. The reserve specialist relies on the accountant to provide accurate financial information for the reserve study. Your insurance agent works with your accountant to provide information for the audit. And, they all work closely with the association board, the manager and the attorney.

But with so many financial experts out there, how do you choose? What can you expect? And how do you make it all come together? Here are some guidelines from the experts themselves.

**The Accountant**

By Howard A. Goldklang, CPA

Rodney Dangerfield always joked that he didn't get any respect. At times, certified public accountants feel the same way. However, green eyeshades aside, the key role that this calculator-carrying professional plays for the association is no laughing matter. The CPA conducts the annual audit, which is required by most associations' bylaws and which declares to the world that your association board is operating in a fiscally responsible way. A CPA is an accountant who has passed the Unified Certified Public Accountant Examination and met other state education and experience requirements.

**HOW TO SELECT**

To find the right CPA for your association, ask candidates the following questions:

- How many associations does your firm represent?
- What is the experience and background of the staff assigned to us?
- Are you familiar with the American Institute of Certified Public Accountants *Common Interest Realty Associations Audit and Accounting Guide*?
- What are the results of your last peer review?
- How long after the end of the fiscal year can we expect the audit results?

- Will a member of the firm meet with us to review the audit results?
- Will the firm provide a list of recommendations for improvement?

Once you've selected someone, outline the auditor's responsibilities and objectives in a letter. Include estimates of the auditor's time and fees.

### **SERVICES PROVIDED**

The audit provides independent assurance that the association's financial statements are properly presented in accordance with generally accepted accounting principles.

In lieu of an audit, CPAs can issue two other types of reports. They are:

1. A compilation, which involves taking financial records prepared by the association or its management company and producing a set of financial statements. Importantly, this provides no assurance as to the adequacy and accuracy of the underlying numbers.

2. A review, which requires the auditor to perform specified analytical procedures and make certain inquiries. This procedure provides limited assurance that the association's financial statements are in accordance with generally accepted accounting principles.

In addition to the annual audit, the services provided by the CPA include preparing federal and state tax returns and other required returns such as personal property tax returns.

The primary association contact for the auditing firm should be the treasurer, who should maintain contact with the CPA through the year and make sure that the auditor is kept up to date on important financial developments. The treasurer should make sure that the auditor receives monthly financial statements, board and finance committee minutes, reserve fund schedule updates, investment changes and updates on any developing legal situation or any other matter of financial significance.

In addition to the treasurer, the CPA may need to touch base from time to time with the association board, its finance committee or audit committee. The CPA also works with the management company or whoever maintains the association's financial records.

Rodney Dangerfield didn't get any respect. Your accountant deserves better. Mutual respect and communication among the CPA, the association and the management company help ensure a successful, productive relationship.

*Howard A. Goldklang is president of Goldklang, Cavanaugh & Associates, P.C. in Reston, Va.*

**Resource:** *Best Practices Report #4: Financial Operations*. Retail: \$12. CAI Members: \$6.95. To order, visit CAI's bookstore at [www.caionline.org/bookstore.cfm](http://www.caionline.org/bookstore.cfm) or call (888) 224-4321.

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## The Reserve Specialist

By Lynn Voorhees, RS

Community associations rely on reserve specialists to help them plan reserve studies that will enable them to repair and replace shared community facilities such as community centers, pools and parking lots.

Thoughtful reserve planning is essential to protect the physical and fiscal assets of any community association. Conducting a reserve study and maintaining an adequate reserve fund reduces the likelihood that a community will need to levy special assessments when major expenses become due. And, by being prepared, you will help protect property and resale values in the future.

### HOW TO SELECT

When hiring a reserve professional, ask the following questions:

- What experience do you have? The reserve planner should have the education, background and expertise to accurately assess the condition of the common property.
- Are you a designated Reserve Specialist (RS) or working under the direction of one? This designation ensures the standards used to design the reserve study are current and nationally accepted. Reserve Specialist is a designation awarded by CAI to those who have a bachelor's degree in construction management, engineering, architecture or equivalent experience and have prepared at least 30 reserve studies in the past three years. They also must abide by CAI's ethics code.
- Will you include a financial analysis with a cash flow over a 20- to 30-year period? The cash-flow analysis provides the information necessary for the association board to meet its fiduciary responsibility to plan and budget future replacements of the common property.
- Will the reserve study include funding scenarios other than full funding? Full funding is aimed at maintaining your reserves at or near 100 percent. Today, full funding is considered over-funding. Common elements are never replaced at the same time, but the money is collected and accumulates in the bank. Other funding goals also should be provided. These goals are outlined in the National Reserve Study Standards adopted by CAI and include threshold, baseline and statutory funding. A current funding analysis also is a helpful document that illustrates what will happen if the association continues contributing to its reserve fund at current levels throughout the time period covered by the cash-flow projection.

**SERVICES PROVIDED**

The reserve study should include both a physical analysis, which identifies and assesses the condition of the association's common elements and a financial analysis, which looks at your association's financial condition and develops a long-term funding plan.

There are three types of reserve studies:

1. A full reserve study, which includes an inventory the association's facilities and estimates of the current costs for replacement; a site visit for assessing the condition of the facilities to determine when they might need repair or replacement; a review of the existing reserve fund; and a funding plan to enable the association to maintain its long-term financial health.
2. A reserve study update, which uses the existing facilities inventory combined with a site visit to assess the condition of the property, the reserve fund status and the funding plan.
3. A reserve study update with no site visit, which uses the existing inventory and updated replacement cost estimates with projections of when repairs would be needed based on the time that has elapsed since the last reserve study, plus the reserve fund status and the funding plan.

In each case, the board and community manager rely on the reserve study to help the association plan and schedule the replacement of common elements in a timely manner. And, regardless of the type of study, it's crucial that the association manager and board provide accurate information to the reserve specialist.

Reserve and update studies are typically performed for a fixed price unless the association chooses to have additional work performed. Extra work, such as a review of the community for additions to the reserve study, is usually based on time required plus expenses. A retainer fee is often requested, with additional payments required when a draft report is issued, and final payment is due once the final report is provided. The payment schedule should be clearly spelled out in the contract.

*Lynn Voorhees is manager of community association services with Kipcon, Inc. in North Brunswick, N.J.*

**Resource:** *Reserve Funds: How and Why Community Associations Invest Assets*, edited by Mitchell H. Frumkin, P.E., P.P., RS, MBA, and Nico F. March, CFM. Retail: \$25. CAI members: \$15. To order, visit CAI's bookstore at [www.caionline.org/bookstore.cfm](http://www.caionline.org/bookstore.cfm).

**The Banker**

By John Smith

In today's society, consumers expect an expert to be available to take care of their special needs. When community association board members and managers go through the process of selecting a bank, they have the same expectation. There are banks today that specialize in serving community associations, and they can simplify assessment collection as well as help guard against fraud.

**HOW TO SELECT**

When selecting a new bank or evaluating your current bank, ask the following questions:

- How long has the bank been involved in the community association industry? Be cautious of banks that have only recently entered this specialized market.
- How long has the banker been serving the community association industry? When evaluating the individual banker, the more experience in the industry the better.
- Does the bank have customer-service staff who specialize or work exclusively with associations? It's reassuring to know that people are always available to take care of your unique banking requirements.
- What type of special banking services does the bank offer associations? Banks that cater to community associations will normally modify and enhance their existing banking services and products.
- Can the bank provide at least five community associations as references?

**SERVICES PROVIDED**

Some of the products and services that banks routinely provide to associations are loans for renovation or capital improvement projects, online banking, a system for collecting assessment payments electronically from homeowner checking accounts, and lock box service to process assessment payments and make daily deposits into the association's bank account. Other more specialized services include fraud-prevention tools for association checks and websites or automated phone systems that allow homeowners to use their credit cards to pay their assessments.

All of these services are generally offered a la carte. The costs vary from bank to bank, and the methods of payment also vary at each financial institution.

Your bank representative should be available to attend meetings to assist board members or community managers with financial questions. He or she also may need to work with a reserve specialist when reviewing a loan to inquire about possible future expenditures or to ask questions of your accountant to determine adequate cash flow from a financial statement. The banker also should understand collection practices in your state, since it may be necessary to contact your association's attorney to clarify state law or association rules governing assessment payments.

*John Smith is a senior vice president with U.S. Bank, Homeowner Association Division, in Vista, Calif.*

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## **The Insurance Specialist**

By Vincent J. Hager, CIRMS

Insurance is often one of the largest budget items for a condominium or homeowners association. It is critical to the community's viability that its insurance plan minimize risk and protect the assets of the association as well as the homeowner volunteer leaders who govern the association. It is equally important that the association board members choose a qualified insurance professional to help them put together a strong insurance and risk management program.

Community associations are a niche market with uncommon risks that are not easily recognized by generalist insurance agents. Almost everyone knows a family member, friend or neighbor who sells insurance, but few specialize in community association risk management.

Experienced insurance professionals may have obtained CAI's Community Insurance and Risk Management Specialist (CIRMS) designation. CIRMS designees must have at least five years of experience with community association insurance, have handled at least 25 association insurance programs within the past three years or demonstrated significant involvement in providing insurance and risk management services to community associations, and be of satisfactory legal and ethical standing.

### **HOW TO SELECT**

Questions to ask candidates include:

- What is your individual and agency experience with insuring community associations?
- Have you obtained your CIRMS designation?
- What services will you provide to our community?
- Which insurance carriers do you represent, and to whom will you be marketing our program?
- What is your turn-around time for delivery of certificates of insurance?
- Will you be available to meet with our members?
- Can you provide information outlining our insurance program to our members?

**SERVICES PROVIDED**

An insurance professional should review the association's current and future risks. Is there a clubhouse, tot lot, tennis court, swimming pool or other amenities? The insurance provider will visit the site to review the association's assets and any possible liabilities that exist on the property. He or she also can review the current insurance program to determine if coverage is sufficient to protect the association from loss, offer annual reviews of current and past losses and recommend ways to minimize future losses.

The insurance professional also should market the insurance program to companies that understand community association risks. Some carriers offer specialized policies to address those specific risks. Those that don't may push what they have (and try to make it fit), which may not be in the association's best interest. The insurance professional should provide multiple quotes. The insurance professional also can provide Certificates of Insurance for unit owners and their lenders and can review Certificates of Insurance from the association's independent contractors.

Insurance professionals usually are compensated by the insurance companies. If not, they will require a fee for the services they provide to the association.

*Vincent J. Hager is a principal with JGS Insurance in Holmdel, N.J.*

**Resource:** *Risk Management: How Community Associations Protect Themselves*, by Clifford J. Treese, CPCU, ARM, CIRMS. Retail: \$25. CAI Members: \$15. To order, visit CAI's bookstore at [www.caionline.org/bookstore.cfm](http://www.caionline.org/bookstore.cfm) or call CAI Direct at (888) 224-4321.