community
ASSOCIATIONS INSTITUTE

www.caionline.org

key issues

STATE ADVOCACY

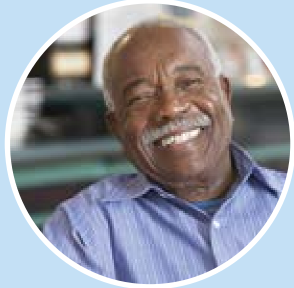
For the 65 million people living and working in America's community associations (cooperatives, condominiums, and homeowner associations).

About Community Associations Institute

With more than 33,000 members dedicated to building better communities, CAI develops and provides information, education and resources to association board members, community managers and other professionals who support community associations. CAI's mission is to inspire professionalism, effective leadership and responsible citizenship—ideals reflected in homeowners associations and condominium communities that are preferred places to call home.

CAI's mission of building better communities is achieved by:

- Advancing professionalism through national and chapter-based education programs.
- Publishing the largest collection of resources available on community association management and governance, including website content, books and periodicals.
- Conducting research and serving as an international clearinghouse for information, innovations and best practices in community association operations, governance and management.
- Advocating for public policies that protect associations and the investments that owners have made in their homes and communities.
- Giving community managers and other industry professionals the opportunity to earn credentials, which demonstrate to homeowners that these professionals have the training, knowledge and expertise needed to manage and guide communities.



community
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Community Association Fundamentals

There are three basic types of community associations: condominium associations, homeowners associations and housing cooperatives. While each community association will have its own history, personality, attributes and challenges, all associations share common characteristics and fundamental principles—

- Community association homeowners choose where to live and accept a contractual and ethical responsibility to abide by established policies and to meet their financial obligations to the association.
- Community association homeowners have the right to elect their community leaders and to use the democratic process to determine the policies that will protect their investments.
- Community association leaders protect the community's financial health by using established management practices and sound business principles.
- Community association leaders have a legal and ethical obligation to adhere to the association's governing documents and to abide by all applicable laws.
- Community association leaders seek an effective balance between the preferences of individual residents and the collective rights of all homeowners.
- Community associations ensure that the collective rights and interests of homeowners are respected and preserved.
- Community associations provide services and amenities to residents, protect property values and meet the established expectations of homeowners.
- Community associations succeed when they cultivate a true sense of community, active homeowner involvement and a culture of building consensus.
- Community association leaders and residents should be reasonable, flexible and open to the possibility—and benefits—of compromise, especially when faced with divergent views.

COMMUNITY ASSOCIATIONS BY THE NUMBERS (2013)

$4.7 trillion
Estimated value of real estate in community associations

$65 billion
Value of assessments paid by community association residents to support their communities

65.7 million
Number of community association residents nationwide

76.3 million
Number of volunteer hours association leaders devoted to serving their communities

328,500
Number of community associations in the United States

Why Community Associations Work

Community associations work best when owners come together to manage and support the operations of their community by selecting a strong board of directors to govern the association. Elected by their neighbors, volunteer association board members—along with all other homeowner volunteers—serve the interests of all residents in their communities.

This model of community governance works. Independent research conducted in 2014 shows that nationwide, association homeowners hold positive views about their community association boards by an almost 9 to 1 margin. The success of community associations led by effective boards has led consumers and municipalities to place a higher value on the community association model of housing.

Consumers and local governments value community associations for five primary reasons, which has led to the continued growth of community association housing—

1. The value of homeowner management. Americans have largely embraced community association living because those closest to the community, the residents, are responsible for developing and enforcing the community's covenants and rules. Homeowners and residents make the decisions that affect their neighborhood and importantly have the ability to directly impact and shape community rules.

2. Sharing the cost of community resources. Most American households have neither the financial resources nor the time to own or maintain amenities common to many community associations. Living in a community association, residents have access to the resources the modern American consumer desires in a neighborhood. Whether it is walkable communities with parkland and open space or mixed-use developments with access to retail stores and public transportation, the community association model of housing helps consumers maximize the use and enjoyment of their homes.

3. Privatizing public functions. Local jurisdictions often require builders and developers to create community associations as a requisite to new housing construction. Because of the fiscal challenges faced by many municipalities, associations are created with the stipulation that they will assume many responsibilities that traditionally belonged to municipalities, including road maintenance, utilities, trash pickup and storm water management. Privatization allows local jurisdictions to approve the development of needed housing without having to increase taxes to pay for additional infrastructure.

4. Expanding affordable homeownership. Almost from their inception in the 1960s, condominiums have tended to serve as an affordable gateway to homeownership for many households. Making housing affordable for greater numbers of Americans has been a consistent goal of federal, state and local governments for decades. Without the efficiencies inherent in association development and operation, affordability would be an even greater challenge.

5. Minimizing social costs and fostering market efficiencies. Community associations not only maintain home values, but also reduce the need for government oversight. Associations promote shared responsibility through contractual membership, collective management, mandatory covenants and agreements between the association and homeowners.

Community associations serve as an efficient way to provide services, govern common areas, and be responsive to homeowner concerns and priorities.

Creating Successful Communities

While many factors determine a community's success, there are several attributes that successful communities have in common. Successful communities invest in board member education and training, equipping these volunteer leaders with the knowledge and access to resources to act in the best interests of all residents.

Successful communities conduct business in a transparent manner, adhering to a clearly stated code of ethics. Board members in successful communities interact and communicate effectively with residents so that all parties understand why and how decisions are reached.

Successful communities partner with certified professional community managers. These partnerships provide board members and the community access to experienced professionals that can help a community move from good to great.

Successful communities have a strong financial base. To protect homeowners from large, unanticipated costs, successful communities work with insurance agents who specialize in the unique insurance needs of community associations. Successful communities also work with reserve fund specialists to ensure the association has the financial resources today and in the future to fund infrastructure repairs and maintenance that protects homeowner safety and property values.

CAI Resources

CAI is dedicated to providing resources, tools and education for board members, community managers, community management companies and other product and service providers. CAI helps you keep current on the latest news, trends, laws and issues affecting community associations. Visit **www.caionline.org** to access our resources, which include the following:

- Best practices for community associations
- Board member training and tools
- CAI Bookstore
- Industry statistics
- Professional development and designations for community managers
- Public policies

Successful communities also seek out legal counsel from experienced attorneys. The most successful association boards will have a deep understanding of the community's governing documents, but also know when it is necessary to seek out a legal opinion. Specialized attorneys with experience in the practice of community association law ensure that association board members properly enforce community rules, follow the community's code of ethics, adhere to industry best practices and comply with state and federal law.

Community Associations and State Laws and Regulations

Community associations are subject to state laws that control how associations are established, governed and managed. This state-based regulatory system has proven successful because it is predicated on the principle of local control over land-use and real estate decisions.

CAI supports effective state regulation that ensures community association housing is developed, maintained, governed, and managed with sound public policy objectives and standards that protect homeowners, volunteer board members, management and the community association as a whole. State legislation should:

- Provide for full and fair protection of the consumer, including existing residents in conversion projects, through the disclosure of all material facts relating to the development, operation and ownership of such housing.
- Be comprehensive in its coverage of the material aspects of the development, governance, management, and operation of this housing form.
- Provide adequate standards to promote the viability and sustainability of the community association.
- Provide for flexibility for communities to develop rules for the common good. State legislation should not be used as a solution for individual constituent complaints.

CAI believes that these objectives are best achieved by state governments and not by or through legislative or regulatory procedures at the federal level or at the local government level. The likely diversity of legislative policies adopted by local (city and county) governments would unnecessarily inhibit the process across local jurisdictional lines, while enactments at the federal level would be too broad in scope to achieve these goals and fail to reflect and respond to the unique character and needs of local markets.

CAI recommends that when state governments amend their community association laws they consider the need for updated and comprehensive legislation to regulate the development of community association housing consistent with the listed goals. Moreover, in undertaking such review, state governments are urged to consider and give favorable treatment to one or more of the uniform acts, such as the Uniform Common Interest Ownership Act (UCIOA).

CAI, with our network of 33,000 members and hundreds of volunteer leaders throughout the country, work to clarify issues, preserve policies and protect the interests of the 65 million people living and working in America's community associations by staying in close communication with Congress, the administration, state and local officials and regulatory bodies, as well as the general public.

For a current conversation on community association government affairs issues, please visit **www.caionline.org/government.**

COMMON STATE LEGISLATION AND COMMUNITY ASSOCIATION CONNECTIONS

LIEN PRIORITY FOR ASSESSMENTS | UNIFORM ACTS | RIGHT TO CURE

ELECTRONIC MEETINGS AND VOTING | CC&R REQUIREMENTS AND RESTRICTIONS

CONSERVATION AND GREEN ISSUES | HOME-BASED BUSINESSES

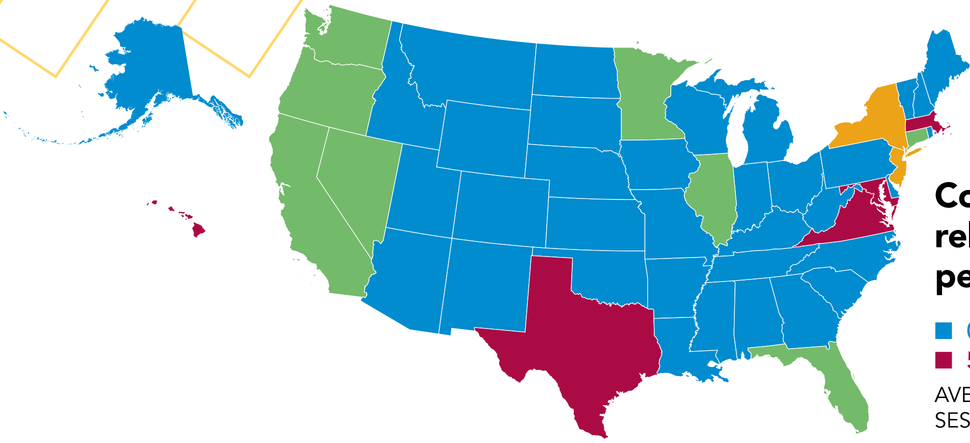
ALTERNATIVE DISPUTE RESOLUTION (ADR) | ASSESSMENT AND FINE LIMITATIONS

LICENSING OF ASSOCIATION MANAGERS | DISCLOSURE BEFORE SALE REQUIREMENTS

LOCAL TAXATION AND PUBLIC SERVICES | SOLAR PANELS AND POLITICAL SIGNS

COMMUNITY ASSOCIATIONS AND STATE LAWS AND REGULATIONS

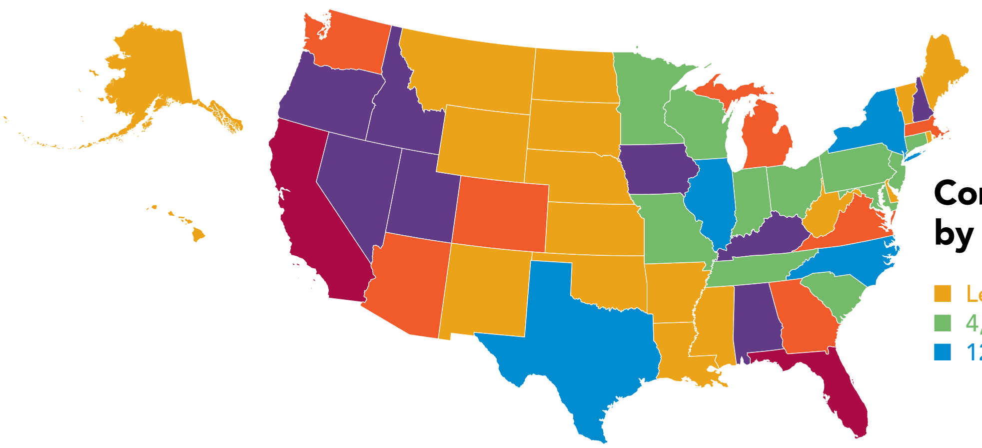
Statistics



Community association-related bills introduced per session

- 0–25
- 26–50
- 51–100
- 100+

AVERAGE BASED ON 2013 & 2014 SESSIONS



Community associations by state

- Less than 2,000
- 2,000–4,000
- 4,000–7,500
- 7,500–12,500
- 12,500–20,000
- 20,000+

U.S. community associations, housing units and residents

Year	Communities	Housing Units	Residents
1970	10,000	701,000	2.1 million
1980	36,000	3.6 million	9.6 million
1990	130,000	11.6 million	29.6 million
2000	222,500	17.8 million	45.2 million
2002	240,000	19.2 million	48.0 million
2004	260,000	20.8 million	51.8 million
2006	286,000	23.1 million	57.0 million
2008	300,800	24.1 million	59.5 million
2010	309,600	24.8 million	62.0 million
2012	323,600	25.9 million	63.4 million
2013	328,500	26.3 million	65.7 million

Homeowners associations account for about 50+% of the totals, condominium communities for 45–48% and cooperatives for 3–4%.

COMMUNITY ASSOCIATIONS AND STATE LAWS AND REGULATIONS

CAI Public Policies

www.caionline.org/publicpolicies

To guide CAI's advocacy efforts, CAI's Government & Public Affairs Committee develops public policy positions on key issue areas that affect CAI members. These policy statements guide CAI volunteer advocates and staff in their advocacy efforts. CAI's over 33,000 members participate actively in the public policy process through more than 60 local, regional and state chapters and 35 state Legislative Action Committees.

Because CAI is a membership organization, any current CAI member can propose a public policy for consideration by the Government & Public Affairs Committee and CAI's Board of Trustees. Through such member input, CAI develops, reviews and adopts public policy statements that protect individual consumers while balancing the legitimate rights of the development industry.

CAI PUBLIC POLICIES

- Aesthetics as an Economic Issue
- Alternative Dispute Resolution
- Assessment Increase Limitations
- Community Association Budgets & Reserves
- Community Association Manager Licensing Policy & Model Legislation
- Community Association Risk Management & Insurance
- Community Association Taxation
- Conservation, Sustainability & Green Issues
- Disclosure Before Sales in Community Association
- Display of the American Flag
- Effective Collection of Community Association Assessments
- Environmental Quality
- Fair Debt Collection Practices Act
- Fair Housing
- Fairness in Federal Disaster Relief
- Financing Availability for Community Association Units or Lots
- Flood Insurance
- Government Regulation of Community Associations
- Home-Based Business in Community Associations
- Insurance Trustee Endorsement Requirement
- Lien Priority for Community Association Assessments
- Local Taxation & Public Services for Community Associations
- Mortgage Interest Deduction
- Private Property Protection
- Protection for Community Associations Volunteers
- Protection of Association Claims in Right-to-Cure Legislation
- Reasonable Occupancy Standards
- Rights & Responsibilities for Better Communities
- Rules Development & Enforcement
- Support for the Uniform Acts
- Telecommunications
- Tenants in Community Associations
- Transition of Community Association Control from Developer to Owners

COMMUNITY ASSOCIATIONS AND STATE LAWS AND REGULATIONS

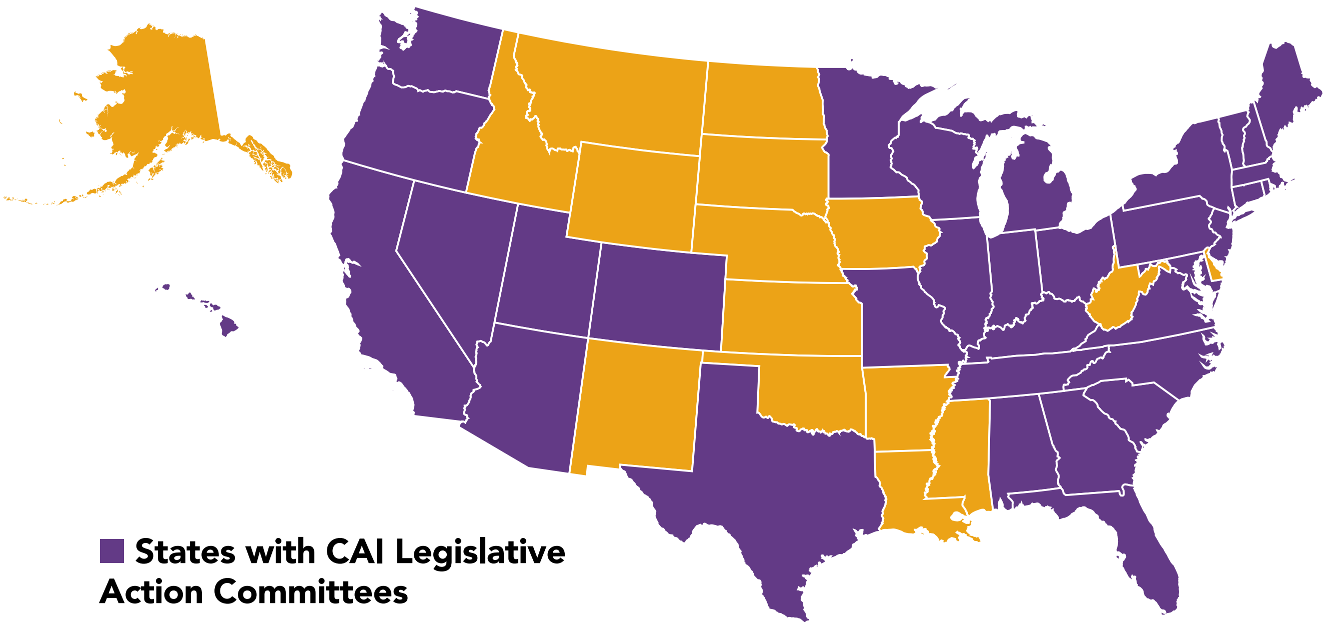
State Legislative Action Committees (LACs)

Legislative Action Committees (LACs) are CAI's official voice with legislators and regulators in the states. LACs allows CAI to speak with one voice on legislative and regulatory matters that affect community associations, community association managers and CAI business partners. LACs are made up of a balance of CAI members and appointees from chapters within a state.

Each LAC must operate within the legal and ethical requirements applicable to lobbying within its state. To fulfill their authorized purpose, LACs organize and operate to achieve the following general objectives:

- Promote and follow CAI's Public Policies at the state level.
- Participate in the development of state legislation, regulations or other public policy initiatives of relevance to the creation and operation of community associations.
- Serve as the CAI point of contact for state government officials and the media regarding state legislation, regulations or other public policy initiatives of relevance to the creation and operation of community associations.
- Disseminate information on state legislative, regulatory, or other public policy initiatives and developments to CAI members and others within the state.
- Educate and inform state government officials regarding the interests and concerns of community associations, their residents and the professionals who serve them.

To contact the Legislative Action Committee in your state, call your local chapter or e-mail **government@caionline.org.**



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Key Definitions

55 and older community. Must have one person who is 55 years of age or older living in at least 80% of its occupied units. The community must be designated "55 and older" to qualify as this type of housing that legally prohibits children and limits occupancy to a certain age span. The designation process involves submitting applications and obtaining approval before any enforcement of the ages of residents commences. Approval from the Department of Housing and Urban Development (HUD) must be received before construction begins.

Accrual basis of accounting. Records revenue when it is earned and expenses when they are incurred. It provides an accurate picture of the association's financial condition. GAAP (Generally Accepted Accounting Principles) requires the use of accrual accounting.

Agenda. An agenda is more than an announcement of the order of business for a meeting. It is a meeting management tool. Meeting agendas follow a standard format, largely based on parliamentary procedure.

Alternative dispute resolution (ADR). An effective way to resolve alleged violations. It involves submitting the alleged violation to a disinterested third party who helps the parties reach an amicable solution. This person is not a judge or an expert in community association law, but can assist in the resolution of the alleged violation.

Appeal. An appeal is a request for a review of a case by a higher authority—if permitted by the governing documents, resolution or state statute. For example—if the hearing panel is a committee, the board of directors acts as the higher authority. If the board of directors is the hearing panel, the alleged rule violator must appeal to an authority outside the community association—for example, alternative dispute resolution.

Architectural guideline. A rule that applies to the appearance or exterior of a lot, home, or unit. Community associations frequently develop architectural guidelines that address fencing, decks and patios, landscaping, doors and windows, color of exterior surfaces, and location of improvements upon lots, for example.

Articles of incorporation. A document that brings a corporation into existence. The document also defines its basic purposes and powers and indicates whether stock will be issued. The articles must be filed with a state in order to incorporate. Among the things it typically must include are the name and address of the corporation, its general purpose and the number and type of shares of stock to be issued.

Assessment. The owner's financial obligation to the community association during a given period of time—usually one year. Also commonly known as a maintenance fee. It covers the owner's share of the common expense (known as "common expense liabilities" in some states). An annual assessment may be paid on a monthly, quarterly, or annual basis, or however the governing documents dictate. Most of a community's revenue will come from owner assessments.

Association-employed manager. An individual who is directly employed by the association to manage the community's operations. The role of the manager is to:

- Provide information, training, and leadership on community association operations to the board, committees, and the community at large.
- Foster a sense of community awareness and spirit within the residents.
- Develop a body of leadership through the committee structure.
- Provide the necessary administrative tools to the board to enable it to make wise, informed decisions on both short-term and long-term actions and goals.

Audit. An examination of the accounting records and procedures of an organization by a certified public accountant (CPA) for the purpose of verifying the accuracy and completeness of financial records. An annual audit may be required by your community association's governing documents and/or your state's statutes. External verification of the accuracy and completeness of your community's financial records is a sound business practice.

Ballot. A written means of voting when secrecy is desired. Ballots may be used for election of new board members and to approve a special assessment, for example.

Bid request. An alternative term for invitation to bid or request for proposal (RFP). The bid request or RFP is an announcement that an organization is interested in receiving proposals for a particular project.

Bond. Bonds are an investment option for community associations seeking to generate additional revenue over time. Bonds can yield more or less than their stated rate of interest. Because the prices at which bonds are bought and sold fluctuate in response to current interest rates, the community association may pay more than the face value of a bond if its stated rate of interest is attractive to buyers.

Budget. An annual financial plan for an organization. A budget provides an estimate of a community's revenue and expenses for a specified period of time. It is the first step in managing your community's financial operations. A budget establishes what services and programs the community will provide, when they will be done, and how they will be done. In other words, a budget reflects the board's policy decisions about what will be accomplished and what will not be accomplished during the budget period.

Business judgment rule. A standard to which directors must conform while conducting a community association's affairs. That is, if a board has exercised reasonable due diligence in making a decision, the court will generally not consider the board negligent in its fiduciary duty. Nor will the court substitute its judgment for that of the board. However, the board must demonstrate how it reached a decision with good faith, loyalty and due care. It is up to the court to decide if the board has exercised reasonable business judgment.

Bylaws. Bylaws are formally adopted regulations for the administration and management of a community association. Sometimes bylaws are developed as part of the declaration although usually, they are a separate document. While bylaws should be included in the original set of governing documents prepared by the developer's attorney, they are sometimes overlooked and must be created and adopted by the board after control of the association is turned over to the homeowners. Bylaws address such topics as:

- Requirements for membership in the community association.
- Requirements for membership meetings.
- Voting rights of member owners.
- Procedures for electing the board of directors; qualification of directors.
- Procedures for the board of directors to elect officers.
- General powers and duties of the board.
- Provision for indemnification of officers and directors.

Cash basis of accounting. Records revenue when it is collected and expenses when they are paid (similar to a checkbook). It is a very simple method to use and is perceived as easy to understand. However, it often does not provide a true picture of the association's financial condition.

CC&Rs (Covenants, Conditions, and Restrictions). Sometimes used interchangeably with master deed and declaration or declaration of covenants, conditions, and restrictions, the CC&Rs is a governing document used primarily for planned communities. More than any other single document, the CC&Rs establishes the planned community because it spells out the essential elements of ownership. The planned community comes into existence when the CC&Rs is filed in the office of the local recorder of deeds or registrar of titles. The CC&Rs generally:

- Defines the portions of the development owned by the individual owners and those owned by the community association—if any.
- Creates interlocking relationships binding all the owners to one another and to the community association for the purposes of maintaining, governing, and funding the development.
- Establish standards, restrictions, and obligations in areas ranging from architectural control to prohibitions on various activities in order to promote harmonious living.
- Creates the administrative framework for the operation and management of the community association—although many of the specific administrative details are spelled out in the bylaws.
- Provides the mechanism for financial support of the community association through assessments.
- Provides for a transition of control of the community association from the developer to the owners.

Certificate of insurance. A document issued by an insurance company/broker that is used to verify the existence of insurance coverage under specific conditions granted to listed individuals. More specifically, the document lists the effective date of the policy, the type of insurance coverage purchased, and the types and dollar amount of applicable liability.

Code of ethics for management. CAI developed a code of ethics for management that applies to manager members and member companies who have achieved specific credentials (CMCA, AMS, LSM, PCAM, AAMC). The code sets forth the general and technical standards for integrity and objectivity, professional courtesy, conflict of interest, use of client funds, and limitations of practice. All community managers should follow this policy to ensure their duties to the client are met. CAI has also adopted codes of ethics for Reserve Specialists (RS), Community Insurance and Risk Management Specialists (CIRMS), and association board members.

Community association. A legal entity in which the owners enjoy the protection, enhancement, maintenance and preservation of their homes and property. They have three characteristics:

- Membership in the community association is mandatory and automatic for all owners. This is unlike other associations whose membership is voluntary.
- Certain association governing documents bind the owner and the association to each other through mandated actions. These "mutually binding documents" also create the automatic lien which provides for severe consequences if the owner fails to pay his or her assessments and other charges.
- Mandatory lien-based assessments (maintenance fees) are levied on each owner in order to operate and maintain the community.

The primary purpose of a community association is to provide for the community, business, and governance aspects of the association. This is achieved by administering, maintaining, and enhancing a residential real estate development, and through the establishment of a system of property rights, binding covenants and restrictions, and rules and regulations.

Community management. There are three types of community management.
Volunteer or self-management. The community association is managed by volunteer members of the board and association.
Association-employed manager. An individual is directly employed by the association.
Management company. The manager is a representative of a firm contracted by the association.
The role of a professional community association manager is to:

- Provide information, training, and leadership on community association operations to the board, committees, and the community at large.
- Foster a sense of community awareness and spirit within the residents.
- Develop a body of leadership through the committee structure.
- Provide the necessary administrative tools to the board to enable it to make wise, informed decisions on both short-term and long-term actions and goals.

In fulfilling the terms of his or her management contract and employment agreement, the professional community association manager is charged with assisting the board of directors' decision-making process by means of providing information-gathering and fact-finding support; implementing the decisions of the board; and administering the services, programs, and operations of the community association within the policies and guidelines set by the board.

Compilation. A presentation of financial statements by a certified public accountant (CPA) without the assurance that the information conforms to Generally Accepted Accounting Principles (GAAP). When a community association hires a CPA to perform a compilation, the CPA cannot make any claims about the accuracy and completeness of the financial statements. This differs from an audit and review, which provide a higher level of detail about the association's financial condition.

Condominium. A type of community association in which:

- The owner owns the unit.
- The owner has an undivided interest in the common areas.
- Each owner owns a percentage of the common elements—which consist of everything except the living units, for example, a pool or lobby. The community association itself owns no real estate as an association.

Conflict of interest. A situation in which an individual's duty to one leads to the disregard of a duty to another. Be sure to take the following steps to disclose a conflict of interest.

- Make full and complete written disclosure of all relevant facts to your board prior to any dealings which may be, or appear to be, a conflict of interest for you.
- Obtain specific authorization from the board in writing before proceeding with any action which may present a conflict of interest. This authorization should also be recorded in the minutes of a board meeting.
- Even after full disclosure, avoid any actions which are—or may be perceived as—a conflict of interest. Individual owners may not be aware of all the facts and may view your actions as improper.

Contract. A contract is an agreement between two or more parties enforceable by law by which each party promises to do, or not to do, something. Whenever a community association enters into a contract, it is binding itself both legally and financially. Therefore, as a community association manager, you must assist your community to enter contracts as carefully as possible—seeking legal or technical advice whenever necessary.

Cooperative. A type of community association in which:

- The owner owns stock or membership in the cooperative corporation.
- The owner has a lease or occupancy agreement for the unit.
- The association (corporation) owns the building and the units.

For most cooperatives, the community association owns all of the real estate as a not-for profit corporation. However, there are a few cooperatives set up as for-profit entities. An owner in a cooperative has two legal relationships—one as someone who shares in ownership of the corporation and one as someone who holds a lease for a living unit. Another name for a cooperative is a stock cooperative.

Declaration. Sometimes used interchangeably with master deed and CC&Rs or declaration of covenants, conditions, and restrictions, the declaration is a governing document used primarily for planned communities. More than any other single document, the declaration establishes the planned community because it spells out the essential elements of ownership. The planned community comes into existence when the declaration is filed in the office of the local recorder of deeds or registrar of titles. The declaration generally:

- Defines the portions of the development owned by the individual owners and those owned by the community association—if any.
- Creates interlocking relationships binding all the owners to one another and to the community association for the purposes of maintaining, governing, and funding the development.
- Establishes standards, restrictions, and obligations in areas ranging from architectural control to prohibitions on various activities in order to promote harmonious living.
- Creates the administrative framework for the operation and management of the community association—although many of the specific administrative details are spelled out in the bylaws.
- Provides the mechanism for financial support of the community association through assessments.
- Provides for a transition of control of the community association from the developer to the owners.

Deductible. The amount that the association or homeowner must pay on each loss. Deductibles can be split between covered causes of loss so that water damage may carry a large deductible, but other perils may carry smaller deductibles. Note: Do not raise a deductible level without first going through the risk management decision-making process.

Directors & Officers (D&O) liability insurance. This insurance is designed to pay for damages arising from wrongful acts that do not lead to property damage, bodily injury, advertising injury, or personal injury. Examples of "wrongful acts" include the failure to file taxes, collect assessments, maintain replacement reserves, or deliver core services to its residents (member/owners and tenants). For instance, the board or the community association may be at fault for not fixing hand rails (someone falls and is hurt), but the result of that wrongful behavior led to bodily injury (BI), which is insured in the CGL and not in the D&O policy. On the other hand, D&O will defend the board and may pay for any settlements or judgment if an owner sued the association for not uniformly enforcing the governing documents. An insured should specifically include the community association, committee members and employees, as well as board directors and officers, whether they are elected or appointed and whether they are past or current.

Due process procedure. A formal rules-enforcement process designed to protect the rights of all parties involved. There are several benefits to using a due process procedure to enforce community association rules:

- Alleged violations all handled the same way.
- Courts recognize and value the procedure.
- Majority of violations can be resolved.
- Non-threatening environment furthers voluntary compliance.
- Provides opportunity to explore alternative means of resolution.

Duty of loyalty. Duty of loyalty is also known as fiduciary duty. A fiduciary is any party that administers the assets of another. This duty requires the fiduciary to act in the other party's interests when administering its assets. The fiduciary must avoid serving its own interests or those of third parties at the expense of the asset owner's interests, which in this case, would be the community association. Failure to maintain a duty of loyalty is unethical and considered a conflict of interest. For example, if you select a lawncare provider because they promise you a referral bonus, which you plan to keep for yourself, that is considered serving your own interests instead of the interests of the community, and therefore is a conflict of interest.

Ethics. Ethics involves learning what is right and wrong, and then doing the right thing—but "the right thing" is not nearly as straightforward as conveyed in a great deal of business ethics literature. What is an ethical guideline today is often translated to a law, regulation or rule tomorrow.

Executive session. There are times when a board of directors must hold a discussion or make decisions of a sensitive nature. Many states have so-called "sunshine laws" which limit the reasons why a governing board may go into a closed or executive session. Executive sessions may be held to discuss sensitive items such as litigation, contract negotiation, issues of a sensitive nature or personnel matters. Typically, there are no minutes for an executive session as the proceedings are confidential and intended for discussion only. Once the board has decided on its course of action, it should reconvene to the regular board meeting to vote so that the decision is recorded in the minutes. The discussion leading to the decision remains confidential. Some state statutes limit how executive sessions can be used and how decisions made in executive sessions should be recorded.

Facilities management. The process of operating, maintaining, repairing, and replacing common property—that is, the common elements or areas—in a community association. A community association has four major maintenance goals:

- To meet the needs of the individual residents as they relate to the community association's responsibilities.
- To preserve and enhance the common property.
- To limit potential exposure to injury to residents, guests, and employees.
- To protect property values of the homes or units through successful maintenance of the common property.

Fidelity insurance. A common insurance coverage for income exposures to loss. This insurance protects against employee dishonesty which may lead to the theft of money, securities, or property. For the community association, this coverage must insure all persons (e.g., board members, committee members, volunteers, community manager, etc.) who handle funds whether they are salaried or not. Often fidelity insurance will be combined with the Commercial Package Policy (CPP). Fidelity insurance limits are often set by government sponsored enterprise (GSE) standards. The GSEs, with appropriate controls, require three months of assessments, but best practices suggest three months of assessments plus the reserve funds. The association should have its own fidelity coverage independent of the management company's policy. The management company should also be covered under the association's policy, as well as any unpaid volunteers; these provisions should be written into the policy.

Fiduciary duty. Requires directors to act in the best interests of the community as a whole, and for the benefit of the corporation. This fiduciary duty has two components:

- Board members are required to avoid conflicts of interest and acting out of self-interest.
- They are also required to act as reasonable people in managing the association's affairs. Although they may delegate some of their authority to others, they cannot delegate their legal obligation to protect the asset that is the total community. It is the board that is ultimately responsible for the management of the association. The board can direct or empower the manager to take certain actions on behalf of the community association. However, the board is still responsible to the owners.

Financial report. Document that reports on the community's financial condition and activities. Financial reports have two primary purposes:

- To provide their internal and external users with the information needed to make appropriate decisions on behalf of or regarding the community association.
- To enable the community association board and manager to control the community's financial operations.

At a minimum, interim financial reports should include:

- A statement of revenue and expense with a comparison to budget.
- A balance sheet.

Accompanying information to the financial reports should include:

- Bank statements with reconciliations.
- Aged receivables report (amount owed by owners).
- Open payables report (amount owed by the association).

Foreclosure. A legal proceeding filed in court whereby a party with a claim against an owner can claim ownership of the unit involved in order to recover the money it is owed. The unit is usually auctioned by the court's representative or the association's legal counsel and sold to the highest bidder. If a community association purchases a vacant unit that is foreclosed, it may rent it or use it to house an onsite employee.

Governing documents. The purpose of a community association's governing documents is to provide for the legal structure and operation of the community. The documents:

- Define the rights and obligations of both the community association and its owners.
- Create a binding relationship between each owner and the community association.
- Establish the mechanisms for governing and funding the community association's operations, including the establishment of the automatic lien.
- Set forth rules and restrictions for the:
  - Protection of both owners and the community
  - Enhancement of property values
  - Promotion of harmonious living

The general hierarchy of authority among governing documents consists of:

- Recorded map, plat, or plan (to show the precise location of units, lots, and/or common area)
- Declaration, CC&Rs, master deed
- Proprietary lease or occupancy agreement
- Articles of Incorporation (if incorporated)
- Bylaws
- Board resolutions

Hearing. One of the steps in a due process procedure for enforcing rules. A hearing is a fact-finding session and an inquiry into the allegations and an investigation of them. A hearing should be viewed as an opportunity for both the association and the alleged violator to hear the input of the other party, not to engage in additional conflict. The hearing panel determines the facts; whether or not a rule has been violated; the penalty to be imposed, if any; and the enforcement date of the penalty, if any. The hearing panel then issues this information in the form of a decision. A hearing panel may find an alleged violator to have committed a violation or not—or decide that not enough clear evidence was submitted to allow the panel to reach a clear decision. The hearing panel should issue its written decision within the time frame mandated by state statute, the governing documents, or an administrative resolution by the board. A default hearing should be held if the alleged violator fails to appear.

Hearing notice. A written notice to an alleged violator that a hearing will be held to consider his or her alleged violation. Issuing a hearing notice is one of the steps in a due process procedure for enforcing rules. A hearing notice may contain the nature of the alleged violation, the action requested to cure the alleged violation, the time and place of a hearing, an invitation to attend the hearing and produce any statement, evidence or witnesses on his or her behalf, a statement that a sanction may be imposed, and the maximum amount of any sanction.

HO-1,-2,-3,-4,-5,-6 policies. Terminology varies with insurer, but homeowner (HO) insurance policies are usually referred to by the following numbers:

- HO-1, HO-2, HO-3, and HO-5 refer to policies for owner-occupied single-family homes.
- HO-4 is a tenant's policy.
- HO-6 is a policy specifically for a condominium or cooperative unit owner.

Insurance. Transfers the financial burden of paying for certain losses to a third party—a commercial insurance company. Not all exposures to loss may be covered by insurance. Like other contracts, an insurance policy is—

- An agreement between two or more parties.

- Enforceable by law.
- A contract in which each party promises to do, or not to do, something, and which terms are not negotiable.

There are four primary types of insurance coverages that address the four types of possible exposure to loss: property, liability, income, and personnel.

Investments. The purchase of anything with money value for the purpose of generating additional money over time, such as savings accounts. A community manager may be responsible for overseeing the association's investments. A well-run community association should have a written investment policy and a set of procedures for ensuring that the policy is implemented. Every community association also should establish a system of internal checks and balances to protect its investments.

Lien. A legal claim by one party (community association) on the property of another (delinquent owner) to obtain the payment of a debt or the satisfaction of an obligation. The automatic lien in a community association protects the association's interests. It encourages payment of the debt. Among other consequences of a lien, the owner cannot sell or transfer the unit without settling the debt.

Maintenance fee. The owner's financial obligation to the community association during a given period of time—usually one year. Also commonly referred to as an assessment. A maintenance fee for an owner's share of the common expenses is a binding legal obligation based on the community association's governing documents. It covers the owner's share of the common expense (known as "common expense liabilities" in some states). Maintenance fees may be paid on a monthly, quarterly, or annual basis. Most of a community's revenue will come from maintenance fees.

Master association. A governance structure where there is more than one residential community association grouped together. Often there is a hierarchy with independent sub-associations under a master association. It is also known as an Umbrella Association.

Master deed. Sometimes used interchangeably with declaration and CC&Rs or declaration of covenants, conditions, and restrictions, the master deed is a governing document used primarily for planned communities. More than any other single document, the master deed establishes the planned community because it spells out the essential elements of ownership. The planned community comes into existence when the master deed is filed in the office of the local recorder of deeds or registrar of titles. The master deed generally:

- Defines the portions of the development owned by the individual owners and those owned by the community association—if any.
- Creates interlocking relationships binding all the owners to one another and to the community association for the purposes of maintaining, governing, and funding the development.
- Establishes standards, restrictions, and obligations in areas ranging from architectural control to prohibitions on various activities in order to promote harmonious living.
- Creates the administrative framework for the operation and management of the community association—although many of the specific administrative details are spelled out in the bylaws.
- Provides the mechanism for financial support of the community association through assessments.
- Provides for a transition of control of the community association from the developer to the owners.

Mediation. A form of alternative dispute resolution (ADR) whereby disputes are submitted to a trained, uninvolved third party for assistance with solving a problem. Mediation is a non-adversarial process that is intended to bring about a "win-win" resolution. In this process a neutral third party—called a mediator—attempts to guide the parties into reaching a resolution or settlement that is favorable to everyone. It gives both parties a chance to present their side in a forum where confidentiality is guaranteed. Mediation is often the first meaningful discussion the parties have, in which each party has the opportunity to face the other and work through the issues with the help of the mediator. Like arbitration, mediation can be binding or nonbinding, depending on the terms agreed upon between the parties before the session begins.

Minutes. Minutes of meetings must be kept to document the actions and decisions of the board of directors. Minutes are the permanent record of the board. The minutes should reflect what actions were taken in the meeting, not what was said. The minutes are not meant to provide a narrative or transcription of the meeting.

Mixed-use development. Usually consists of a mixture of residential and commercial and/or industrial uses. Their marketing slogan is often "live, work, play."

Notice of meeting. An announcement of an upcoming association meeting. Should be sent in writing to board members at least a week before a meeting. Exactly how far in advance you send a notice of meeting may be set by your community association's governing documents or state statutes. A meeting agenda and any supporting materials should accompany the notice. All owners should receive a board meeting schedule at least once a year.

Occupancy agreement. Governing document for cooperative owners that defines the member or stockholder's rights and obligations in relation to the living unit.
- Identifies the premises that the stockholder is permitted to occupy exclusively.
- Defines the term of the lease and the rent (sometimes called maintenance) that is payable by the stockholder.
- Establishes the powers and obligations of the cooperative's board of directors, including assessment rights.
- Defines the events which would result in the termination of the proprietary lease.

Also commonly known as a proprietary lease, this document serves generally the same purpose as the declaration or CC&Rs in other community associations.

Operating expenses. Budget items that occur on a regular basis for the normal and usual services and repairs for the association. For example:
- Swimming pool management
- Professional and administrative services (management, legal, accounting, insurance)
- Utilities (electric, gas, water, oil)
- Contract services (lawn maintenance, elevator, trash removal, janitorial services, painting)
- Repairs (plumbing and pipe, electrical, door and lock)
- Personnel costs (compensation and benefits for community employees)
- Educational costs for employees, board members and volunteers (membership, courses and publications from Community Associations Institute)

Parliamentary procedure. A set of rules for conduct at meetings. Experience demonstrates that this can be a very effective decision-making method in a group setting. Be sure to introduce new board members to parliamentary procedure as they take their places on the board. The most popular version of parliamentary procedure is *Robert's Rules of Order.*

Personal property. For insurance purposes, property consists of "real property" and "personal property." Examples of personal property include inventory, furniture, fine arts, equipment, supplies, machinery and valuable papers and records.

Planned community. A type of community association in which:
- The owner owns the lot and/or unit.
- The association owns the common areas.

Other names for planned communities include—
- Homeowner Association (HOA)
- Owner Association
- Townhouse Association
- Property Owners Association (POA)
- Planned Unit Development (PUD)

Planned communities are the most common type of community association.

Professional ethics. The rules or standards that govern the conduct of members of a profession. The special expertise demonstrated by members of the profession holds them accountable to a higher standard of trust by others.

Property exposure to loss. One of the four types of exposure to loss for an association, property losses can be tangible community association property (buildings, contents, etc.) or intangible association property (information, proprietary website, etc.).. The other three types of exposure to loss for a community association are personnel, income, and liability.

Proxy. A written statement authorizing another person to cast a vote on the signer's behalf. The association's governing documents may dictate when and if proxies are permissible.

Quorum. The number of members required to be present for the board to legally conduct the business of the association. In the absence of a quorum, the only formal actions a board may take are to recess, adjourn, or take measures to obtain a quorum. A community's bylaws typically set the quorum for a board meeting.

Real property. For insurance purposes, property consists of "real property" and "personal property." Examples of real property include buildings, land, and the newest type of property exposure—information such as websites, logos and similar electronic information and data processing (EDP). Information loss is an exposure for some community associations that have websites and use e-mail to communicate electronically with members.

Reserve account. Funds put aside—in reserve—for the replacement of major components of a community's common property. Typically, the reserve account might be used to replace asphalt paving, concrete sidewalks, roofs, central heating and cooling plants, swimming pool, tennis courts, elevators, and many other property components. Revenue raised for adding a major item will be a major improvement expense. Revenue raised for replacing that item when it deteriorates will come from the reserve account.

Reserve replacement. One of the five basic maintenance programs for community associations, reserve replacement consists of replacing assets as needed from the inevitable deterioration process as they wear out or break. The basis for your reserve replacement is the reserve study and replacement fund budget. However, the maintenance needs of a replacement item may require adjustments in both your reserve study and replacement fund budget to allow you to replace the item sooner or later than originally planned. For example:

- Roof replacement
- Fence replacement

The other four types of maintenance include routine maintenance, emergency maintenance, requested maintenance, and preventative maintenance.

Reserve study. A budget planning tool with which the association expects to offset ongoing deterioration and prepare for inevitable future expenses. Reserve projects are typically the largest expenses that an association faces, and proper financial preparation is essential. The reserve study is used for developing a reserve account budget. The study addresses all major common physical components of the property that the association must repair, replace, restore, or maintain. The study should contain, at a minimum, a statement of the remaining useful life of each item; an estimate of the current cost of repair, replacement, or restoration, of those items; and an estimate of the total annual contribution necessary to defray the cost of repair, replacement, or restoration, of those items after deduction of existing reserve funds. In essence, the study must include all items for which the community has long-term replacement responsibility.

Residents forum. Typically held at the beginning of a board meeting, is an open forum for owners and residents to speak. This gives them the opportunity to raise items for future board consideration. Some boards prefer to hold the open forum at the end of the meeting because many issues the owners want to raise may be addressed during board discussion.

Resolution. A motion that follows a set format and is formally adopted by the board of directors. Resolutions may enact rules and regulations or formalize other types of board decisions. Resolutions are typically kept in a Book of Resolutions. There are four types of resolutions:

- Policy resolutions: owners' rights and responsibilities, i.e., use of recreation facilities
- Administrative resolutions: internal operation, i.e., where board meetings will be held
- Special resolutions: apply a policy or rule to an individual owner, i.e., decision about alleged rule violation
- General resolutions: routine events, i.e., adoption of annual budget

Resolutions are part of a community association's governing documents.

Review. A year-end report prepared by a certified public accountant (CPA). A review is less thorough and less costly than an audit, but provides some assurances to the board and other interested parties that the financial statements make sense. Report states that the CPA is not aware of any material or significant changes that should be made to the financial statements in order for them to be in conformity with GAAP (Generally Accepted Accounting Principles) for community associations. As is also the case with audits, it is important to use a CPA who is familiar with community associations. If included in the scope of work, a review typically includes the preparation of the association's tax return. A review provides:

- No external verification of the accuracy and completeness of financial records.
- No confirmation of selected transactions.
- No inspection of records.
- An analytical review of financial procedures for comparison and changes from the previous year.

- Interviews of management personnel.
- Some assurances that the financial statements make sense.
- No opinion letter, but a report that no material or significant changes are needed.

Risk management. The process of making and carrying out decisions that will minimize the adverse effects of accidental losses upon the community association. This may consist of incorporating risk control techniques within the community and purchasing a comprehensive community association insurance program.

Robert's Rules of Order. Robert's Rules is the most popular version of parliamentary procedure, which is a set of rules for conduct at meetings. There are many sources available that present these rules in a simple, straightforward way. Make the effort to train your board to use them effectively, as they can be a very effective decision-making method in a group setting.

Routine maintenance. One of five basic maintenance programs for community associations, routine maintenance is regular, recurring upkeep that must be done. Typically, the job description for a maintenance employee or a service contract is used to define the routine maintenance that is expected. For example:

- Cleaning the common areas
- Mowing the lawns

The other four types of maintenance include preventative maintenance, emergency maintenance, requested maintenance, and reserve replacement.

Rule. Also called a regulation or resolution, is a specific statement of required behavior or action, a violation of which carries a penalty (sometimes called a sanction). In a community association, rules outline expected behavior, identify limitations, and govern the community in the use of common property; the use of individual lots or units; changes in the architecture, the construction, or the appearance of lots or units; and the behavior of residents, guests, and other visitors. Community associations frequently develop rules that address pets, parking, noise, garbage, solicitation, etc.

Severability provision. A legally binding contract provision that states that if a court finds any part or clause of the contract to be illegal or invalid, that part will be separated (severed) and the remainder of the contract will remain in force, so that the whole contract need not be invalidated.

Site visit report. A common management tool for ensuring that maintenance work actually gets done properly and in a timely manner. A site visit report is a compilation of all the maintenance needs identified during a site visit. It is commonly used to:

- Assign maintenance tasks to staff or contractors.
- Budget for maintenance needs.
- Identify any preventive maintenance that needs to be done.
- Determine when onsite staff or independent. contractors are not properly performing work on time.
- Demonstrate to the board that the manager is visiting the property and complying with contractual obligations.

Special assessment. A one-time assessment, often voted on by owners, to cover a major expense, such as a major repair or replacement or improvement that was not included in the annual operating budget or replacement reserve. Reliance on special assessments is not considered part of a responsible funding plan. Special assessments may be indicative of poor management.

Standing committee. Committee that meets a basic and on-going community association need. Examples of typical standing committees that are not mandated include:

- Budget/finance
- Grounds
- Social/welcome
- Newsletter
- Recreation, pool, or swim team
- Public relations
- Rules/dispute resolution

Standing committees serve at the pleasure and direction of the board in an advisory capacity, and can be disbanded at a board directive.

Statement of revenue and expense. A record of the association's financial transactions and activities over a given period of time—usually a month, plus the fiscal year to date. Its purpose is to track the financial activity of the association. The statement of revenue and expense should be compared to the budget to provide a variance report. The three major components of a statement of revenue and expense are revenue, expense, and excess revenue over expenses. The statement of revenue and expense is required by GAAP (Generally Accepted Accounting Principles).

Statute. Statutes are laws written and adopted by legislatures or administrative agencies. There are three types of state statutes that apply to community associations:

- General state statutes
- Specific state statutes
- Uniform state statutes

State statutes of one of several sources of legal obligations for community associations.

Transition. The general process by which the control and responsibilities of the governing board of an association are transferred from the developer to the persons who bought unit/lots in the association. Transition is not a single event. It is a multistage process of many events taking place over a period of time—ranging from when the declarant decides to build until the declarant no longer has any financial obligations to the association.

Turnover. That date upon which homeowners gain control of their association from the developer. Typically, turnover occurs at an annual or special meeting of the homeowners.

Volunteer or self-management. The community association is managed by volunteer members of the board itself or by committees under the direction of the board. While there are no out-of-pocket management fees, continuity can be difficult because of volunteer turnover and inconsistent service. Professionalism depends on the skills and experience of those who volunteer. Other management options include hiring an association-employed manager or management company.

Warranty. A promise or guarantee that parts, materials, or labor will last for a designated period of time. Warranties required should be part of the RFP (request for proposal) packet when a community association is interested in receiving proposals for a particular project. In addition, any contract the association signs should state the agreed upon warranties clearly and in detail. A warranty should state:

- What is covered
- For how long
- What is not covered
- What the contractor will do if the work or product proves defective

Zero-base budgeting. A method of budget preparation where all amounts are set to zero and the budget amount must be justified, instead of assuming the line item is needed and adjusting the amount for the coming year. The zero-base approach keeps you from accepting this year's figures at face value. It requires you to analyze the reasons for the actual amounts spent. The actual dollar figure may be less or more than the budgeted figure because of circumstances you cannot assume will exist during the coming year. For example, lawn maintenance costs during a dry season will be low—but a community cannot assume that the coming year will be just as dry.

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