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2020 LEGAL Issue

INSIDE:

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COLUMNS

President's Letter

ALICIA GRANADOS
Chapter President
CAI-RMC

As we embark on 2020, and an exciting year ahead for the Rocky Mountain Chapter of CAI, I first want to look back and express gratitude to the entire 2019 Board of Directors and especially our President, David Graf, for his outstanding leadership. David's knowledge and guidance throughout his term on the Board has been invaluable, and I know the openness, warmth and humor he displayed as President helped our members feel more connected. In addition to David, I also want to say thank you to Denise Haas and Kim West for their years of service on the Board of Directors. The leadership of these three individuals over the past six plus years has undoubtedly laid the framework for the chapter's success for years to come. Congratulations and welcome to our newest Board members, Kimm Hudson, Ashley Mayer and Loura Sanchez. We are excited to have your ideas and energy as we move into 2020.

The Board and Chapter Committee Leaders have been busy for the past few months with our 2020 Strategic Planning. As we consider the vision of CAI-RMC, we often spend time trying to define who we are as an organization. I believe each of us has our own connection to CAI . . . our own CAI story. . . and we are most successful in attracting others when we take time to share that story. As 2020 unfolds, and we move toward the culmination of our membership drive, I challenge you to reach out and share your CAI story with someone. Perhaps the new member you recruit will make you the winner of the Grand Prize Dream Vacation!

Our 2020 calendar is full of exciting events with a mixture of education, social and networking opportunities. Whether it's the Peak Education Series, Spring Showcase, Clay Shooting or one of our membership group forums, I encourage you to check out the CAI-RMC Calendar online and get involved. Make this the year that you participate more than ever before and fill the pages of your CAI story.

What is your CAI story?

COMMON INTERESTS

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Rick Kimble

Position(s) Held: President
Association: Glenn Oaks Townhome Owners Association
Association Size: 125 Townhomes

Community Achievement:

- Being fiscally responsible has been an ultimate success for our community. When taking over as President, our community would special assess for insurance year after year. Today we are collecting for our insurance a year in advance, therefore no longer having to special assess our owners, or pay for insurance lending. Additionally, we have fully funded our reserves and have instituted policies to maintain a healthy reserve balance making Glenn Oaks Townhome Association an attractive buy option.

If you're interested in sharing your community's achievements or spotlighting a homeowner leader, please email bridget@caddo-leadership.com. We'd love to hear from you.
You may also nominate a homeowner leader by filling out the questions referenced above.

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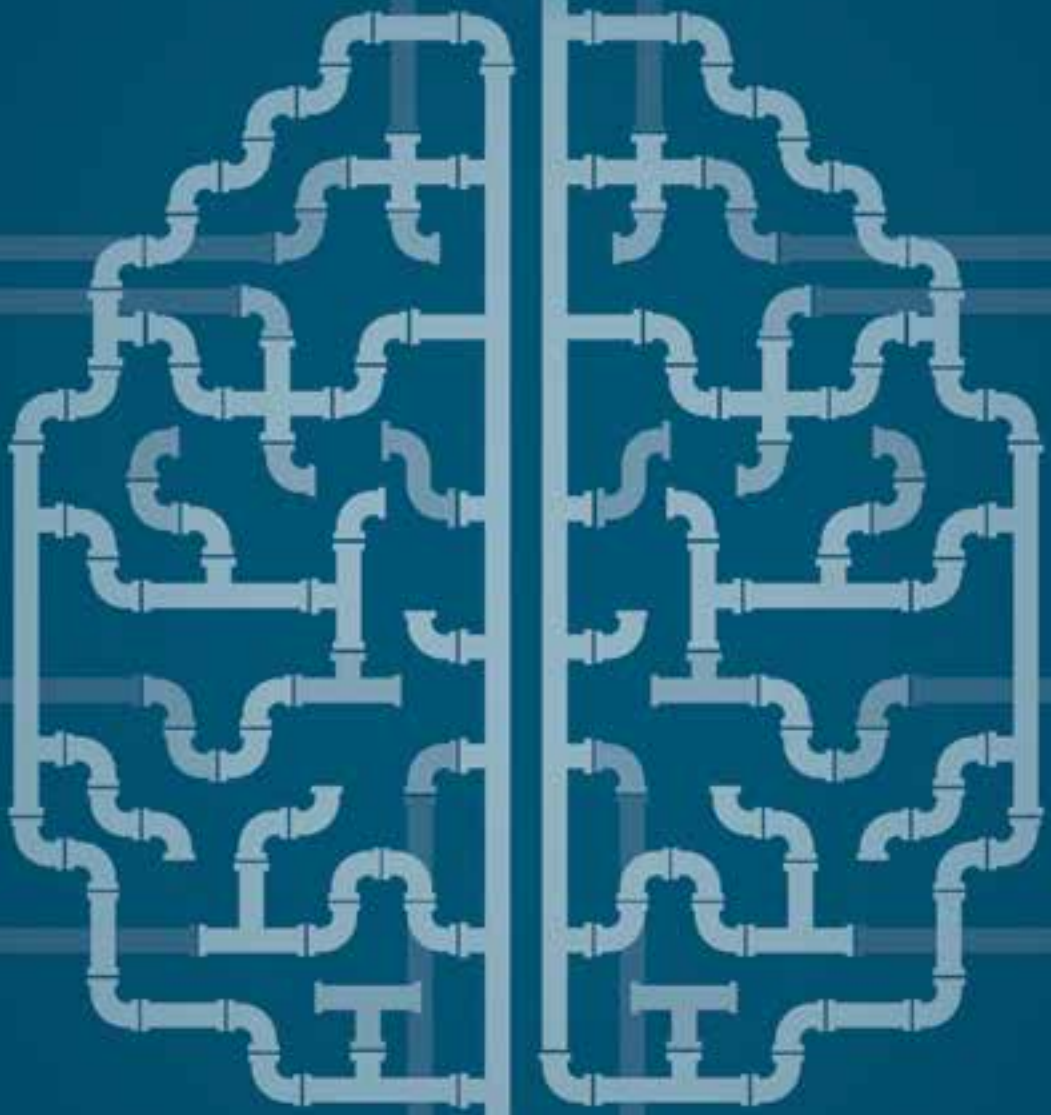

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Homeowner Leader Q&A

Q: We have requirements for a five member Board of Directors. Two members resigned recently and one is not engaged and does not contribute to the Board. We have trouble getting any type of community engagement and we're not getting any volunteers to join the Board. What should we do? Is it legal to have a three member Board even though our bylaws call for five?

A: Yes, it's legal to have a three member board, as the Board still has a quorum. However, the Board should canvas the community for additional Board members, which may be appointed by the remaining Board to fill the remainder of the terms of the members who resigned. The Board may also consider amending the number of Board members, if this may be done without a vote of the members. Any action taken during the period of time when the Board was not fully constituted should be ratified by the Board once it is fully constituted.

CAI Social Media Roundup

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Q: I've been told that communication is the key to operating a successful HOA. Our Board of Directors understands this but we're a little lost in how to best communicate given that people rarely read emails that are actually important and they bypass anything sent in the mail or physically posted. In a world of over communication how do Boards best communicate effectively and responsibly?

A: Communication is key—in our personal and professional relationships, with our neighbors and communities, in everything we do. So, how can our Boards effectively communicate in order to build strong community and encourage engagement and activism? As you stated in your question, people rarely read emails and they also bypass anything sent in the mail and/or physically posted within the community. Don't forget about the number of people that don't have easy web access and/or don't use email (they do exist!!). And you can't always rely on those owners who do attend meetings to pass along important information. So what's left? How does a Board communicate with its membership most effectively? And also important, how will your board gauge the success of its communication?

The following is a list of common types of communication within a community and your Board may need to implement a few strategies to accomplish its goal of effective communication.

Community Newsletter—A newsletter, while it can be a lot of work, can be an effective tool in getting information distributed to your membership. It can be sent via regular mail and/or electronic mail. Again, the issue is getting people to read the information, but if you talk it up in meetings and with neighbors, and include relevant and engaging information for your community, in time, hopefully you will see more active members in your community (or at least showing up to meetings).

Website—If your community doesn't already have a website, consider creating one. And if your community does have a website, review it and make sure that it is easy to navigate, provides relevant information about the community to owners (governing documents, meeting minutes, etc.). Ask for feedback about the community through the website (online engagement which could lead to engagement at meetings and within your community). While there may be owners that shy away from use of online technology, such as the Internet or e-mail, there is a large percentage of the population that wants an easy place to find all of the information about their community, and a website is a great place to house that type of information!

Social Media—Social media platforms, such as Facebook, Next Door, and Twitter are (and have been) taking over the way that many people communicate (and get their news!). The use of social media (responsibly) can certainly be a tool to build community and engage your members, but there are also risks. As this is a large topic with a lot of information, check out the article titled Social Media: Building Community and Avoiding Pitfalls in our October 2018 issue of Common Interests (which can be found on the website) or talk to your attorney about the pros and cons of your community having a social media presence.

Email Communication—Many of us are already drowning in email communication. Despite the average person receiving over 100 emails per day (!!), email does remain an effective communication tool. Make sure that you are using specific subject lines to grab the reader's attention and try to keep the emails as short as possible, while still conveying the necessary information. The longer emails are, the less likely they are to be read.

Verbal—There's a lot to be said for verbal communication. Make sure that your Board is talking to its members, your neighbors. Especially when it comes to big issues in the community, going door-to-door and/or engaging your community members at community events or on your nightly walks, can go a long way.

Talk with your Board and manager about the specific needs and goals for your community. Decide how you will gauge that your community is effectively communicating. Is it a general feeling within the community, are more members attending meetings, are people engaging more at community events? Whatever it is, it may require a combination of the above types of communication. And, you still may not reach some owners. But just asking the question means that you care about effectively running and building a strong community. Kudos to you!

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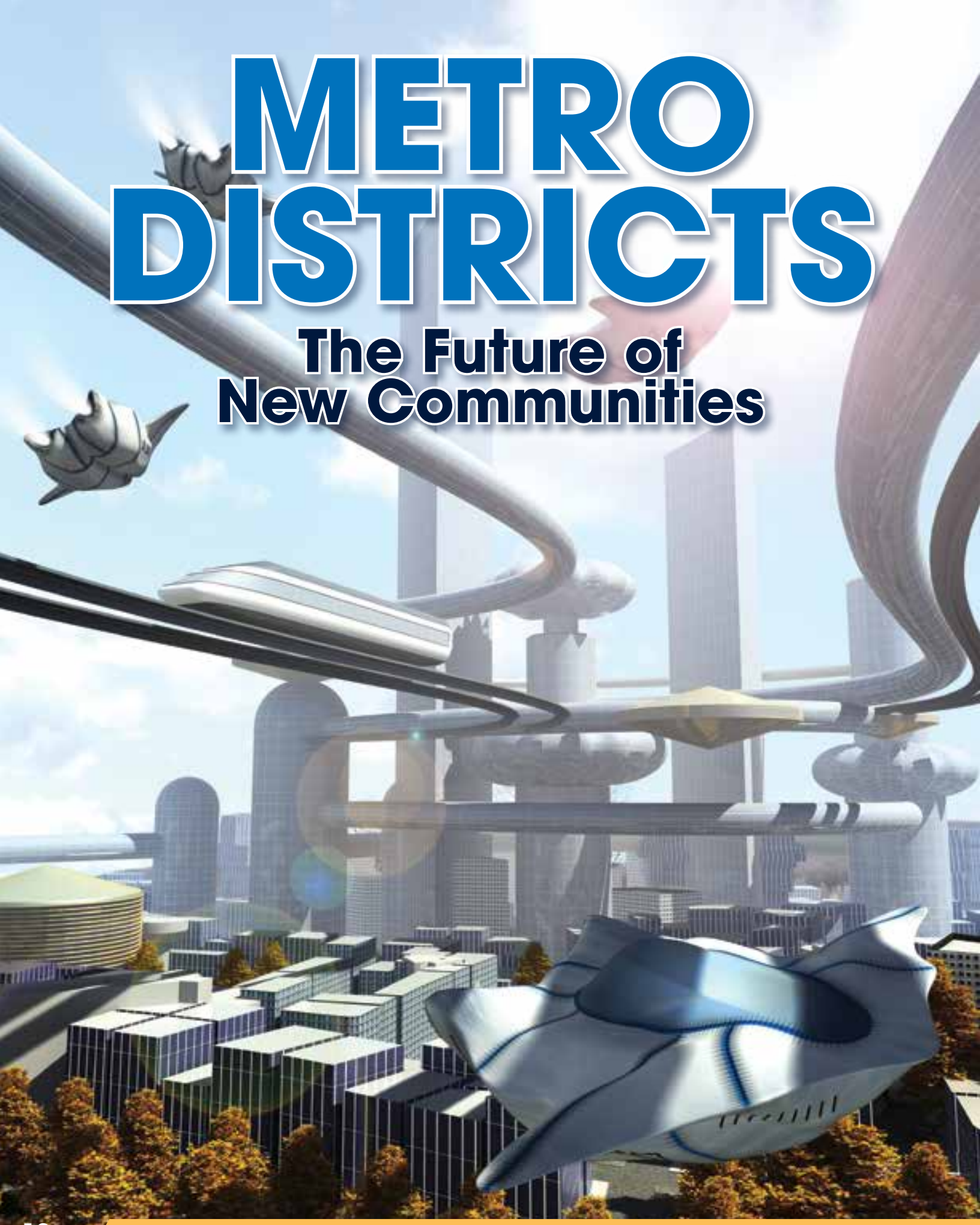
METRO DISTRICTS

The Future of New Communities



Danaly Howe
Centennial
Consulting Group

If you are searching for a new home in Colorado, chances are that you will come across a subdivision governed by a metropolitan district. Metro districts, for short, are being popularized over the traditional homeowners association (HOA) structure, and for good reason. Prior to the 1980's, most cities and municipalities paid for the cost of new roads, utilities, and other infrastructure. Since then, developers have been expected to pave the way for their developing communities. Metro Districts have been around since the 1980's and provide an alternative, and increasingly common, method for paying infrastructure costs. At first glance, metro districts can seem complicated and intimidating, but a few key ideas can help any new home buyer become comfortable with their structure.

Metropolitan districts are governmental entities that operate much like a town council: board members are elected through an election process alike to your county elections, meetings are open to the public, and there are regular statutory filings which provide transparency. Although metro districts are not required to provide HOA-type functions such as covenant enforcement, they are being utilized more frequently in this capacity. Most notably, metro districts (and other types of districts such as fire districts, school districts and library districts) collect property taxes from their population to pay for expenses.

In new communities without a metro district, the developer will recoup the cost of infrastructure when they sell the lots or finished homes. This reimbursement through property sales means that home prices in these communities are typically higher than in a metro district subdivision; the first homeowner shoulders the burden of these costs in their purchase price. In a metro district neighborhood, these infrastructure costs are paid for like a home mortgage. Development costs are consolidated into long term debt (usually 30 years) and paid off over time through payments coming from the property tax mill levy. Homeowners in metro district areas contribute to the debt in proportion to how long they own their property. Metro districts must have their development costs certified by a 3rd party engineer for fair bidding, costs, and verification of installation. Only those costs which have been verified can be reimbursed.

Metropolitan districts can be in addition to, or in place of, a homeowners association. Instead of HOA dues, operations costs are usually funded through property taxes (in addition to the taxes for debt). These include such expenses as landscaping maintenance, snow removal, management, accounting, legal, and utilities. Both types of entities have a board of directors who make decisions concerning the budget, contractors and rules and regulations. Because taxes are used to fund district property, these areas are considered public and accessible to anyone. For this reason, developers may create an HOA in addition to a metro district to allow for amenities (such as a pool facility) to be kept private to its owners. Other reasons for a dual district and HOA structure include separating out the debt and covenant / community responsibilities, and for cases such as condominiums where metro districts cannot use taxes on private property.

"Metro Districts have been around since the 1980's and provide an alternative, and increasingly common, method for paying infrastructure costs."

If you are interested in learning more about metro districts and how they compare to HOAs, you are invited to attend the CAI Spring Showcase on March 31, 2020, which includes a class entitled "Metro Districts vs. HOAs – What are They?" taught by Danaly Howe. This class will take a more in-depth look at how various aspects of districts function, including legal requirements, meetings, records requests, elections, and budgeting. We will also dive into some of the pros and cons of metro districts and expand on information surrounding how property taxes on new homes work and misconceptions surrounding tax collections.

To find out whether a property is part of a metro district, a search of the property tax record on the County Assessor site will show a list of taxing entities that are currently in effect. Additionally, the Special District Association collaborates with all types of districts to provide information and resources with can be accessed by going to www.sdaco.org.

Currently working toward her PCAM, Danaly has been a District Manager and AMS with Centennial Consulting Group in Northern Colorado for over 7 years. She can be reached at danaly@ccgcolorado.com, or by calling 970-484-0101 ext. 1. The Centennial Consulting Group's website is located at www.ccgcolorado.com.

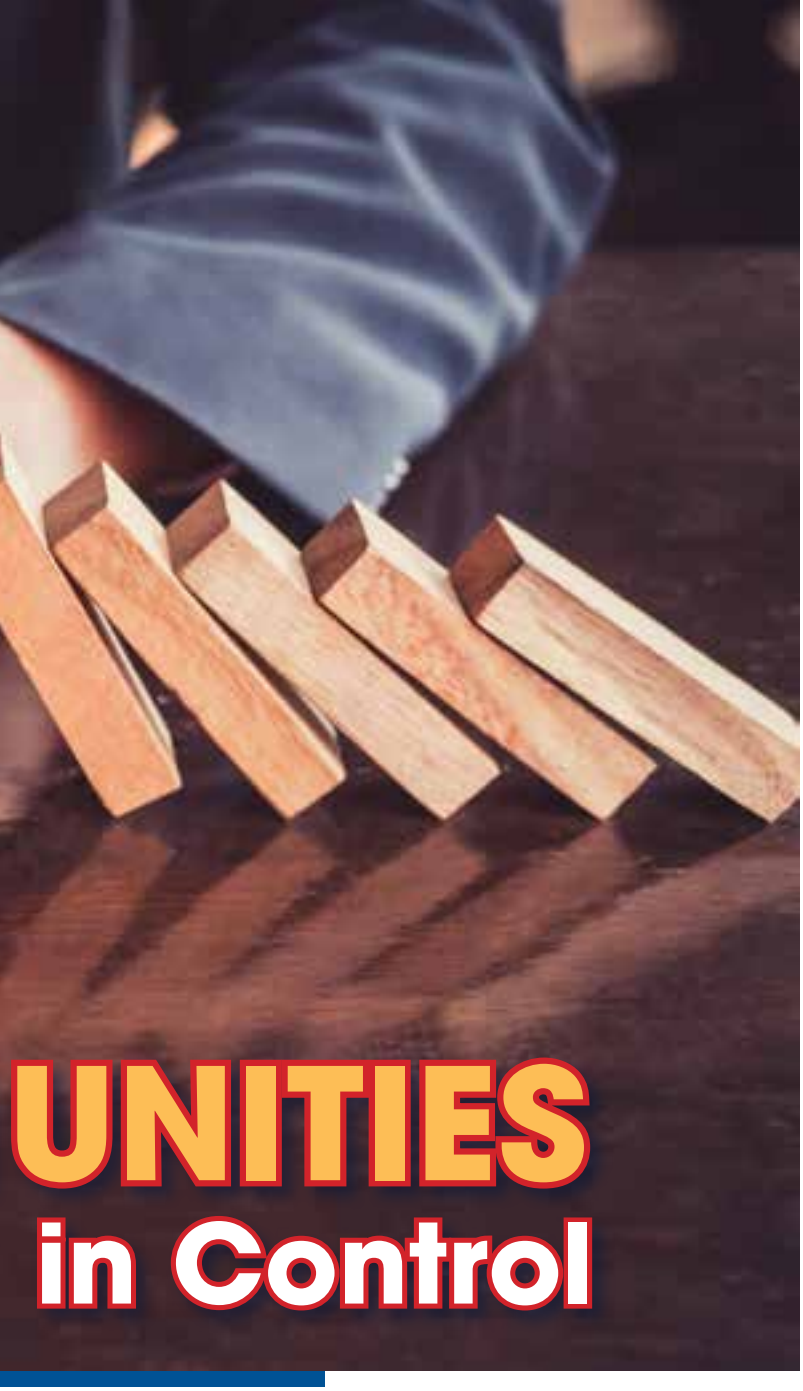
MANAGING COMM
While the Developer is Still

Heidi E. Storz, Esq.
Kerrane Storz, P.C.

For some, "developer" is a bad word. For others, a "developer" provides new business opportunities. Before a homeowners association has transitioned from developer to homeowner control, community managers have to work with people in both camps and must walk the difficult tightrope between them. This article describes the one and only tried and true method that will assist community managers in keeping both the developer and homeowners happy (or at least keep people from blaming the community manager for their problems) while the developer is still in control of a community association. That method is through fostering communication.

In a newly constructed community, homeowners are instructed to report outstanding warranty items to the developer by the end of the warranty period. When homeowners make warranty claims and do not receive a timely response from the developer's warranty manager or if the warranty manager sets up meetings that their subcontractors then "blow-off," homeowners rightly become frustrated and angry. Moreover, developers often experience high turnover in the warranty manager positions. The high turnover adds to the frustration, as homeowners are then forced to report items multiple times and often get different responses from different warranty managers. For example, one warranty manager may promise to take care of something, while the subsequent warranty manager tells the homeowner the issue they are reporting is not covered by the warranty.

On the developer side, warranty managers can understandably become frustrated with homeowners (and there is always at least one) who incorrectly believe that the warranty manager is their



UNITIES in Control

own personal "handyman" or that insist that the removal of the toy their two-year old stuffed down the toilet should be covered by the warranty. Some homeowners are ultimately unable to be satisfied, and no amount of remedial work will make them feel as though their issues were resolved.

When these frustrations boil over to include the community manager, what is a manager to do? Simply and without fanfare - community managers should do their best to help these people communicate with one another. Any time communication breaks down between people in a dispute, those people start talking to other people instead of one another. With homeowners, that often means talking to their neighbors, then talking to people who read online reviews or watch Tom Martino, and eventually talking to lawyers.

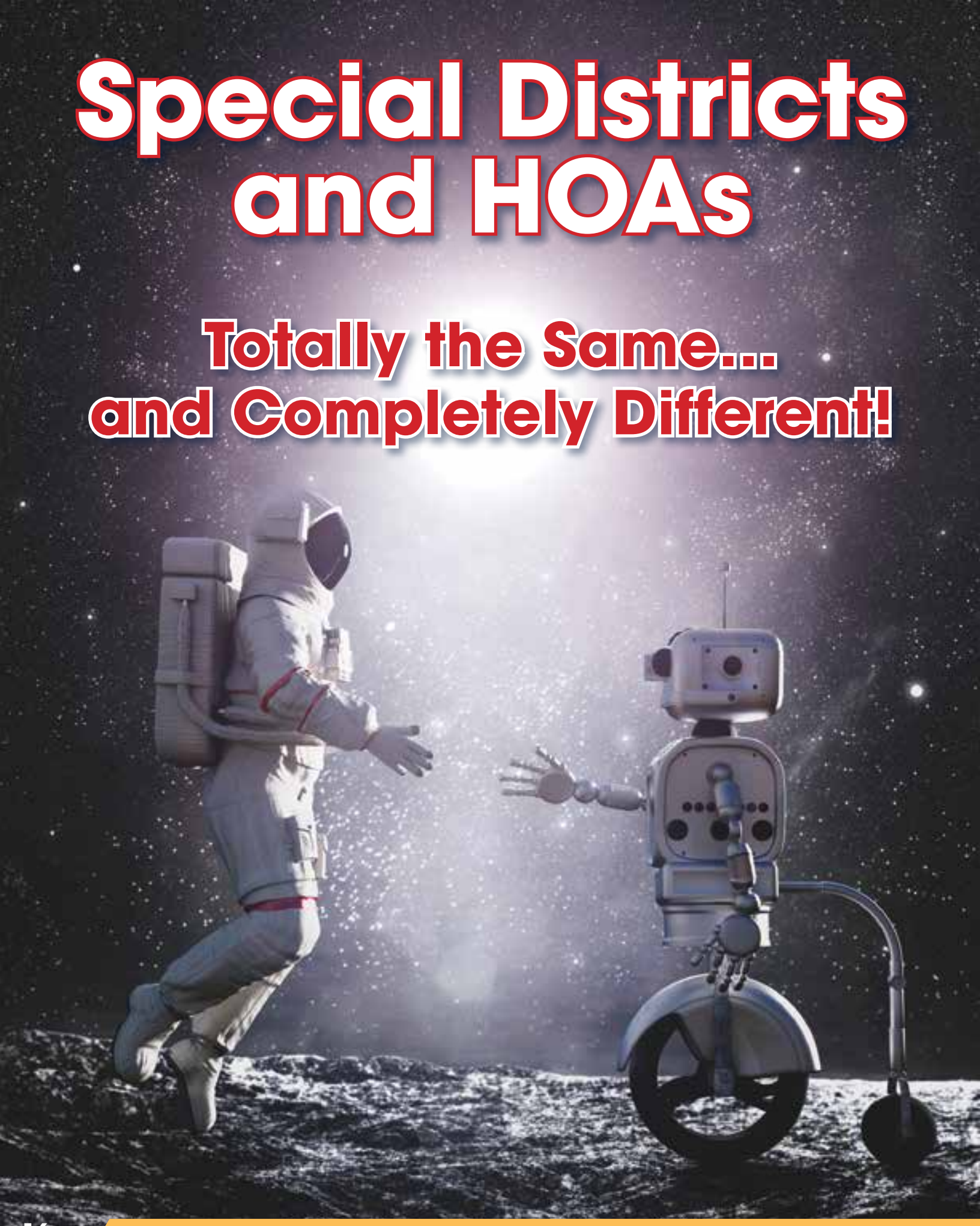
So how can a community manager help people in this scenario who are frustrated with each other communicate better? Easier said than done for sure, but here are a few suggestions:

1. Keep the contact information (including phone number and e-mail address) for the developer's current warranty manager at the ready so that you can provide it to homeowners when they call. This way, homeowners are not wasting time trying to contact people who will no longer return calls and cannot help them.
2. Make sure the developer's warranty managers are informed of and invited to all homeowner meetings. That way, the warranty manager can field homeowner questions about their homes and the community manager won't have to.
3. Obtain a copy of the developer's warranty standards so that you can refer homeowners to those if they have questions regarding warranty coverage.
4. Advise the developer-appointed board members of inquiries that you are receiving from homeowners regarding warranty issues so that they can follow-up with the warranty managers.

For most people, their home is their biggest investment, and people feel strongly about protecting that investment. As such, it is no surprise that homeowners become emotional if they believe developers aren't treating them fairly. It is never easy to deal with frustrated people that feel powerless in their situations. Community managers, however, are uniquely positioned to help dissipate the frustration that can arise between homeowners and developers when you give people real tools to work with. As the old adage goes, "information is power" and information is the tool that can help people move beyond their dispute to solutions.

Special Districts and HOAs

Totally the Same... and Completely Different!



Peggy Ripko
Special District Management Services, Inc.

I began my career in Community Management in 2004, and spent the next years learning all of the intricacies of homeowners associations and how to effectively manage them. I became adept at helping people understand why the rules exist and how associations protect property values. Over the years, I would hear about metropolitan districts without really knowing what they were or how they differed from associations. And I figured that I could manage a metropolitan district as well as I managed associations.

Then, I joined Special District Management Services, Inc. One of the first things I discovered during my tenure as an association manager gave me little insight into how a metropolitan district operates or what is needed to manage it. The first Board meeting I went to left me with questions about statutory compliance requirements, how elections work, why we were talking about bonds, and what cost certifications are.

Luckily, that was not my role in the company- I was hired as a Community Manager. Many developers are now having metropolitan districts provide community management in their communities, and I was hired to coordinate this. Basically, I was hired to do what is typically associated with associations. I am often asked if I like my new position (Yes!) and what it's like. That's when I say that it's totally the same from what I did before….and completely different.

Totally the Same

As a metropolitan district Community Manager, I coordinate inspections, send out violations, and process and approve architectural forms. I draft and send out RFPs for landscaping, pools, and trash, and work with the contractors once approved. I get phone calls about dog poop and barking, deal with angry homeowners who don't like the rules, and welcome new homeowners to the community.

Most metropolitan districts that have community management also have CC&Rs as well as Design Guidelines and Rules & Regulations. Just like for associations, the CC&Rs lay out what we do; how long the architectural review process is, how many people are on the committee, and if the form is denied if there is no response. The Design Guidelines/Rules & Regulations give specifics that are needed to govern a community well; what are the landscaping requirements and when can you put up holiday lights, etc.

Metropolitan districts are also governed by a Board of Directors, who make the decisions for the Districts while the management company carries out those decisions.

Completely Different

Metropolitan districts are quasi-municipal corporations and political subdivisions organized under Title 32 of the Colorado Revised Statutes. Not all metropolitan districts have community management as a part of their responsibilities, but most of those that do are not bound by CCIOA. A part of the income for metropolitan districts is received from property taxes. Some districts have Operations & Maintenance Fees in addition to that but, they are usually minimal.

In most cases, metropolitan districts are organized for the purpose of financing public infrastructure in the community. This is done through the issuance of bonds, with independent engineers providing cost certifications to show that the improvements are eligible for reimbursement. Simply put, the developer gets paid back from a loan after the engineers and the Board approve it.

Metropolitan districts also have statutory requirements that HOAs do not. For instance, any gathering (district related or social) that has a quorum of the directors in attendance is considered a special meeting. Notice must be posted, and it must be open to everyone. For that matter, e-mails sent from one director to the rest of the Board also constitutes a special meeting. Meetings must be posted pursuant to statute and any conflicts of interest must be filed with the Secretary of State. There are also filings required throughout the year that the District Managers must ensure occur in order to be in compliance.

There is no set timeline for transition to homeowner control in a metropolitan district, instead the elections are every two years. At that time, anyone who is a registered voter in Colorado and either owns property in a District or is a resident can run for the Board. Yes, this means that renters can potentially be on the Board.

Working Together

There are some communities that have both associations and metropolitan district involved. In a lot of these instances, the association involved is a condominium community. There are also the districts that do have a Community Management component to them—this is what I do. Over the past two years we have found the best way for this to occur; for each entity to stay in our lanes.

I stay in the Community Management lane—working with contractors for the common areas, answering questions about the rules, architectural inquiries, and discussing what we can do about dog poop and snow removal. If I get questions about the mill levy, the bonds, budgets, or statutory compliance, I send that to the District Manager.

The District Managers stay in their lanes- they do the budgets, ensure bills are paid, certify the mill levy, and ensure statutory compliance. If they get questions about why a homeowner received a violation or how to make a dog stop barking, they send it my way.

The best way to figure out what belongs in which lane is strong communication. Even though I work in the same office as the District Managers, we have meetings on a regular basis to make sure we all know who is responsible for which aspect of the community. We have also set these meetings up if the Community Management is provided by a different company; our goal is always providing the best service we can to the communities we serve.

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***COLORADO SPECIFIC LAWS WILL BE discussed**

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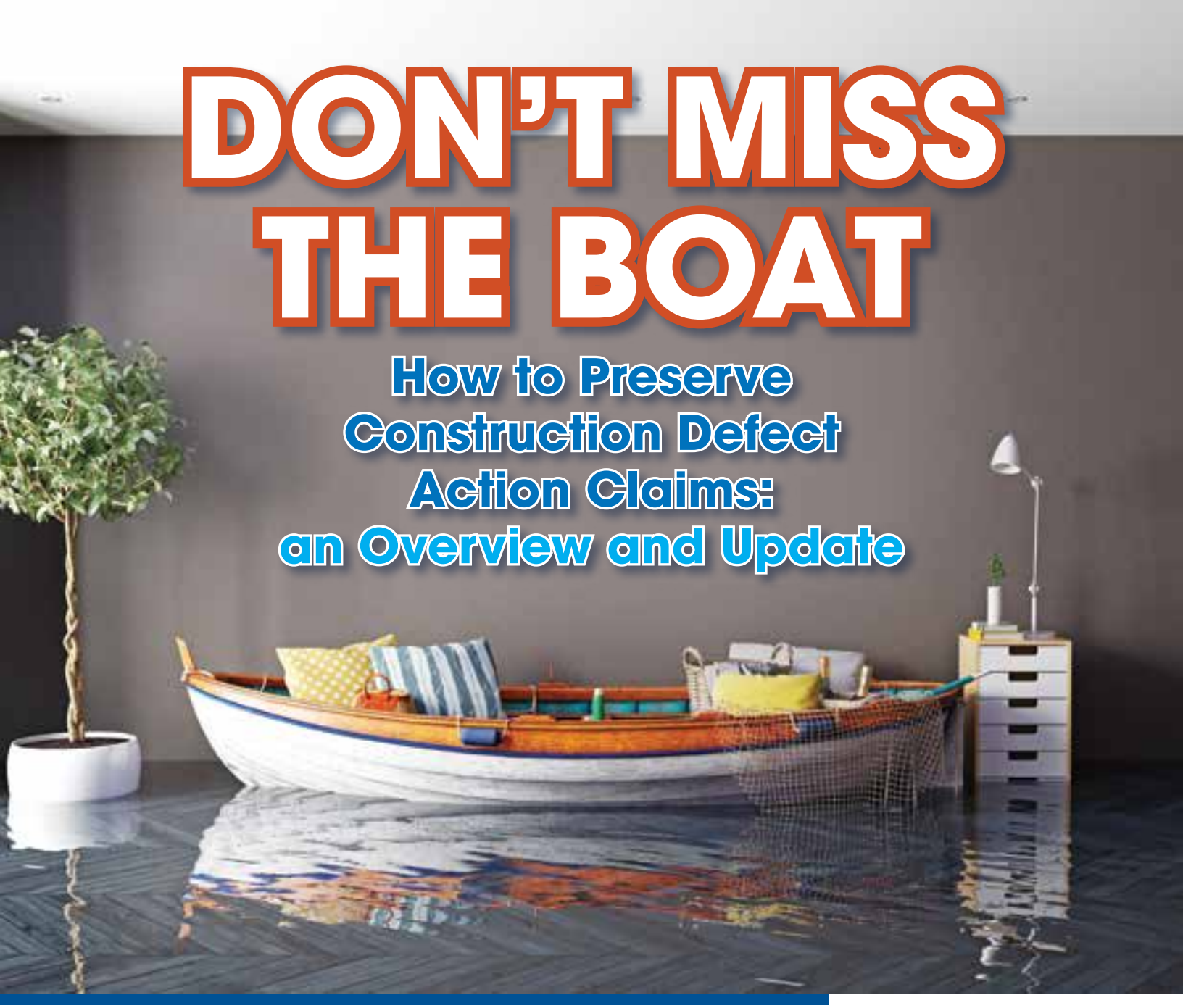
DON'T MISS THE BOAT

How to Preserve Construction Defect Action Claims: an Overview and Update



Kerry Wallace, Esq.
Goodman and Wallace, P.C.

Your Common Interest Community ("CIC") just discovered a construction defect ("Defect") resulting from initial construction or an improvement project. What do you do? Welcome to the complex world of construction defects in Colorado. Time is not on a CIC's side and it is important that a CIC insure a timely and professional investigation of the Defect, compliance with applicable Colorado statutes and preservation of claims. This article provides a generalized overview of a complex process that involves interrelated statutes. Seeking professional guidance is a good idea.

Applicable Statutes

There are four main statutes applicable to Defects: (1) The Colorado Construction Defect Action Reform Act ("CDARA") codified at C.R.S. § 13-20-801, et seq. which provides for statutory processes, guidelines, and limitations for Construction Defect Actions ("Defect Actions"); (2) The Homeowner Protection Act of 2007 at C.R.S. 13-20-806 which voids as against public policy waivers or limitations on certain homeowner rights related to Defect Actions; (3) C.R.S. 13-80-104 which addresses limitation of actions against construction professionals; and (4) The Colorado Common Interest Ownership Act ("CCIOA") at C.R.S. 38-33.3-303.5 which addresses Defect Actions, the current version of which became effective May 2017.

CDARA and CCIOA both have pre-lawsuit filing processes that a CIC needs to follow before filing a Defect Action. CDARA's Notice of Claim Process ("CDARA Process") requires advance notice to the construction professionals of the Defect and provides for a

period of time for informal negotiation. CDARA applies to "new improvements" to real property that are "essential and integral to the function of the project." Arguably, certain remedial work, renovation, and remodel projects constitute new improvements.

CCIOA requires a complicated notice, hearing, record keeping, and vote process before a CIC can pursue a Defect Action ("CCIOA Process"). Failure to strictly follow the CCIOA Process could impact the ability to pursue a Defect Action and a CIC needs to be diligent about adherence to the CCIOA Process. The CCIOA Process includes majority owner approval before pursuing a Defect Action. For purposes of calculating the vote approval percentage, the following votes are excluded: (1) Votes of a "development party"; (2) Votes allocated to banking institution-owned units; (3) Votes allocated to units of a product type that does not contain alleged defects, in a community whose declaration does not impose shared common expense liabilities between the product types; and (4) Votes allocated to units owned by owners who are deemed nonresponsive. The statute does not define the term "nonresponsive."

CCIOA also provides for two exceptions to the requirement of an owner vote: (1) if the Defect relates to a facility intended and used for nonresidential purposes, if the cost to repair does not exceed $50,000; and (2) if the Association was the contracting party for the performance of labor or purchase of services or materials. "Nonresidential purposes" is not defined in the statute but likely applies to common amenities, such as clubhouses, swimming pools, or facilities dedicated strictly to commercial use, such as the commercial portions of a mixed-use CIC. The second exception appears to be directed at Defects involving post-initial construction projects contracted for by the CIC, such as a roof replacement.

Often it makes sense to pursue the CDARA Process first to allow the CIC and construction professionals to work on informally resolving the issues. This can avoid the time and expense of the CCIOA Process. If the CDARA Process is not successful the CCIOA Process can be pursued.

Statute of Limitations

Defect Actions have limited time periods when a claim can be brought and after that time period passes all legal rights are time barred. This is called the Statute of Limitations ("SOL"). C.R.S. 13-80-104 concerns limitation of actions against design and construction professionals. There is a two year SOL and a six year statute of repose ("Repose"). The two year SOL requires a Defect Action to be filed within two years of the manifestation of the defect ("Manifestation"). Manifestation is when there is evidence of an issue even if the reason for the issue is not yet known. For example, cracking cement could indicate a soils issue. The Repose provides for a time related overall deadline for expiration of Defect Claims which is six years after substantial completion of the improvements. The exception is a Manifestation that occurs during the fifth or sixth year after substantial completion, then a Defect Action may be brought two years after the Manifestation but no later than eight years from substantial completion. It is imperative for a CIC to document when a Defect first Manifests as that date triggers the start of the two year SOL.

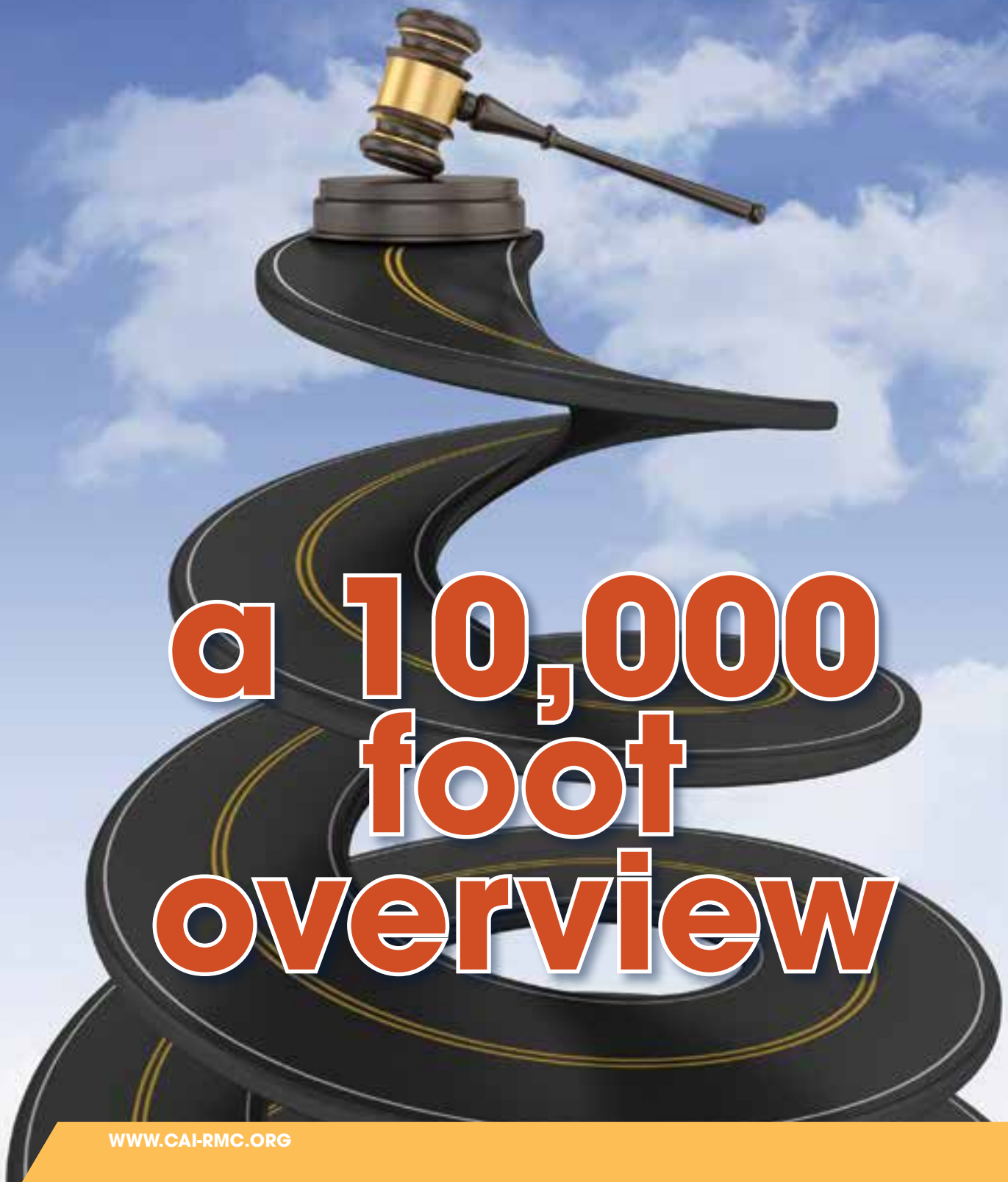
Upon Manifestation of a Defect, a CIC should determine SOL deadlines and proceed accordingly to preserve claims. The statutory pre-filing requirements of CDARA and CCIOA can assist in claim preservation. CDARA tolls or "stops" the running of the SOL during the CDARA Process for the time periods spelled out in CDARA. The SOL is tolled for all Defects listed in the CCIOA Process notice from the mailing date of the notice until the 90 days after the owner voting period ends or until the requisite vote is achieved, whichever occurs first. This tolling can only occur once and cannot be extended. The CDARA and CCIOA processes should be used diligently to avoid any gap in the tolling of the SOL in order to preserve claims.

What to Do

Do not delay. If a Defect Manifests it needs to be immediately investigated and the SOL determined in order to make sure that any potential claims are preserved. The CDARA and CCIOA processes need to be adhered to in order to create authority to file a Defect Action. Dates need to be calculated to insure preservation of claims and maximization of SOL tolling opportunities. The best investigation and determination of liability is worthless if the claims become time barred. Time waits for no CIC and diligence in the observation, identification, and preservation of a Defect Action is critical to a CIC's potential to achieve remuneration for a Defect.

Kerry Wallace is a shareholder at Goodman and Wallace, P.C., a law firm located in the Vail Valley providing legal guidance for mountain resort communities for 30 years. For more information go to www.goodmanwallace.com.

Judicial Foreclosure



a 10,000 foot overview

Kate M. Leason, Esq.
Altitude Community Law, P.C.

As the primary foreclosure attorney at Altitude Community Law, I am often asked to explain the judicial foreclosure process. There are a lot of moving parts in a foreclosure and your average citizen is often unfamiliar with the process. And because it is human nature to shy away from the unfamiliar, Board Members and Property Managers sometimes do not consider foreclosure as a viable collection tool. The information below provides an overview of the basics and an idea of how judicial foreclosures move through the court system from lawsuit to sale.

A foreclosure has three basic parts: (1) pre-litigation – gathering of the information necessary to prepare a lawsuit; (2) litigation —the lawsuit is filed and judgment obtained; and (3) the sale of the property.

Pre Litigation

In the pre-litigation phase, it is a good idea to verify that statutorily compliant delinquent notices were sent to the owner, than no owner has filed bankruptcy, is not active military, has not transferred or sold the property, and that the lender has not begun foreclosure proceedings. The lender commonly forecloses via the Public Trustee, which follows a similar, but different process than a judicial foreclosure. You will also want to obtain a title report or "litigation guarantee" (a title report that provides recourse if there is an error in the title report) to determine who has a recorded interest in the property. Generally, but not always, title reports will reference, at a minimum, a Deed of Trust and the Association's lien. There may also be a second mortgage, judgments, or tax liens. The entities and individuals with liens are known as "lienholders". The liens may be junior or senior to the Association's lien. Each lienholder has a claim on the property and is prioritized according to the date the lien was recorded. There are exceptions for property tax liens, federal and state tax liens (e.g. IRS, etc.) and other governmental charges, which move to first priority position regardless of the recording date.

Liens have priority in the following order: (1) real estate taxes; (2) lien for assessments, but only for six months of assessments; (3) the first Deed of Trust; (4) lien for assessments owed in excess of the six month amount; (5) other lienholders chronologically by the date of recording. If there is a master or sub association with a lien, under Colorado Common Interest Ownership Act the liens have equal priority unless the Declaration states otherwise.

Once all of the above information is obtained, the complaint for foreclosure can be drafted. The complaint is the document that starts the foreclosure action. The complaint states facts about each of the listed lienholders (i.e., Defendants) identifying their interest in the property (e.g., deed of trust, transcript of judgment, etc.) and will allege that the owner has breached the covenants by failing to pay assessments and that the Association is allowed to foreclose pursuant to the Declaration and statute.

Litigation

In the litigation phase, the lawsuit documents prepared in the pre litigation phase are filed with the District Court in the county where the property is located. A Lis Pendens (notice of pending action) is also recorded in the county where the property is located. The Lis Pendens is recorded to place parties on notice of the lawsuit. The complaint and summons are served1 on the Defendants by the sheriff or private process server. Once served, the Defendant must file a response to the complaint within a set number of days as prescribed in the Colorado Rules of Civil Procedure or risk a default being entered against them.

To maintain its senior lien position, the holder of the first deed of trust (usually banks) will typically stipulate to lien priority and agree to pay the superlien (i.e., six months of assessments) to be dismissed from the lawsuit. Stipulations can be entered into with other lienholders to establish lien priority.

In the majority of cases, the owner does not respond to the lawsuit and the judgment and order and decree of foreclosure is entered by default. If an owner does respond, it is usually to request time to pay the debt. Foreclosure is disputed in only a small percentage of cases and the majority of those cases are resolved through mediation. Once an order and decree of foreclosure is obtained, the property can be sold at a sheriff's sale.

Sale/Redemption

The sale involves sending the court order to the sheriff, along with a package of documents that the sheriff needs to either have published in the newspaper, mailed to interested parties, or have issued to the purchaser at the sale. The sheriff will assign a sale date. The sheriff publishes a notice of the sale in a local newspaper for five weeks. With some limitations, the owner can obtain a "cure statement" from the sheriff and pay the balance due to keep the property. If the owner does not pay, the sheriff will hold a sale and the property is sold to the highest bidder. A bid for the total amount due to the Association is submitted to the sheriff prior to the sale on behalf of the Association. This bid establishes the minimum bid for the sale. If another party's bid exceeds the Association's bid, and they are the highest bid at the sale, they are considered the "winning" bid. If a third party purchases the property, the Association is paid in full. If there is not a third party buyer, the Association will become the owner following the redemption period. The redemption period allows junior lienholders to "redeem' (take ownership) of the property by paying the winning bidder the sums he/she expended at the sale. However, if no junior lienholders redeem, the winning bidder or the Association, will be issued a sheriff's deed for the property.

If the Association becomes the owner, the Association may sell or lease the property. If the Association sells the property, the sale is subject to any liens that were not extinguished by the Association's foreclosure, which would include the first mortgage and any liens which had equal or greater priority.

Although the foreclosure process has many steps and is best handled by an attorney, it is a collection option that Association Boards should consider for chronically delinquent owners and owners with high balances that might otherwise take years to collect.

Kate Leason has been a member of the Colorado Bar Association since 2009 and with Altitude Community Law P.C. since 2017. Altitude Community Law specializes in HOA law and has been elevating community associations since 1988. Please visit www.altitude.law for more information.

Center Stage with CMCAs

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The CMCA® offers a level of protection to homeowners and their communities by offering a trusted credential awarded only to professional managers who have demonstrated competency of the defined body of knowledge of a community association manager.

If you are a manager, insurance and risk management consultant, reserve provider, or business partner wishing to enhance your career, the information at www.caionline.org can help you. CAI awards qualified professionals and companies with credentials to improve the quality and effectiveness of community management.

Janet Watts — ACM

1. **How long have you had a CMCA designation?** Since March 2018
2. **Why did you choose to get your CMCA?** To climb the proverbial "ladder". To become more knowledgeable and accredited in the field.
3. **What do you think is the biggest value of having your CMCA?** I am considered a professional portfolio manager. I feel that with my designation, Boards see me as an asset instead of a glorified secretary or rule enforcer.
4. **What do you love most about having your CMCA?** I enjoy having that additional accreditation and the CMCA gives me more value in the industry.
5. **How has having your CMCA helped you in your career?** The credential has opened more doors professionally and personally. I am more competitive in the industry.
6. **What is one thing you learned in the last month?** I have realized that I would definitely like to earn my PCAM in the near future as it is the next logical and professional step in my almost 12 years as a Property Manager.

Christi Whisner — Service Plus Community Management

1. **How long have you had a CMCA designation?** Since 2008
2. **Why did you choose to get your CMCA?** Back then there was no manager licensing, so a CMCA was required by the management company I worked for at that time.
3. **What do you think is the biggest value of having your CMCA?** Continued education and opportunities.
4. **What do you love most about being a CAM?** Working with homeowners and boards and taking care of their communities and making things better for everybody.
5. **How has having your CMCA helped you in your career?** It has opened opportunities at several companies and opportunities to be a senior manager as well as mentoring other managers.
6. **What three words best described your philosophy about being a CMCA?** Being Flexible, because everyday can be a new emergency. Perspective, even when dealing with angry homeowners, not taking things too personally. Reliability, because homeowners are counting on you.
7. **What is one thing you learned in the last month?** I learned how to operate a cost sharing budget between two entities.

Mark Richardson — 4 Seasons

1. **How long have you had a CMCA designation?** March 14, 2006
2. **Why did you choose to get your CMCA?** The industry needs a level of competency, and the CMCA was the first step in showing my clients my commitment to continuing education and professionalism.
3. **What do you think is the biggest value of having your CMCA?** Really the CMCA, AMS, and PCAM designations continue to show my level of commitment to the industry. Our boards are becoming more savvy – they know that the cheapest management is not the best management. In disputes with homeowners or the Board, the designations help show that I have the experience connected with the industry to be the one to provide direction.
4. **What do you love most about being a CAM?** I love being the tour director. I help set a tone for the Association, help the Board achieve their end result, all the while I keep the wheels turning.
5. **How has having your CMCA helped you in your career?** By simply spelling out CMCA – Certified Manager of Community Associations – it says, "He knows what he is doing."
6. **What three words best described your philosophy about being a CMCA?** Responsive/Accurate/Advocate
7. **What is one thing you learned in the last month?** I was reminded of a very famous quote, "You never get a second chance to make a first impression." I have been working on making sure that each interaction I have with Board Members and homeowners in 2020 clearly shows that I am their advocate. They may not like the final outcome, but I want them to know they have been heard.

Diana Behrent — Hammersmith

1. **How long have you had a CMCA designation?** 19 years.
2. **Why did you choose to get your CMCA?** This was required for my position as an association manager. By having the CMCA, it recognizes me having the knowledge required to manage Community Associations.
3. **What do you think is the biggest value of having your CMCA?** By having your CMCA, you stand out in this competitive field of Managers having earned this designation. Secondly, Board Members want to ensure they are hiring Managers that are qualified and have the education needed to hold this position.
4. **What do you love most about being a community association manager?** I enjoy interactions with people and helping to educate them based on the governing documents of the community they live in. Many do not know or even understand what living in an HOA is about.
5. **How has having your CMCA helped you in your career?** It has helped in advancing my career and earnings potential.
6. **What three words best described your philosophy about being a CMCA?** As a community manager, you have the option to manage all types of communities, condos, townhomes, and resort communities. You are trained, experienced and have the knowledge in the many areas it takes to assist the Board in making the right decisions based on their governing documents and provide the best service possible.
7. **What is one thing you learned in the last month?** I can't speak of anything specific in the last month, however over the years you learn not to take things personally, and when listening to a homeowner's concern, the best thing you can do is to LISTEN and realize they want to feel that you understand their concern and even if you cannot give them the resolution they want, being compassionate with them lets them know that you care. You need to have a sense of humor as you cannot make up the things we encounter in a day. Lastly, maintain a balance of home and work. Enjoy your time off, get your rest; by doing this you will have the energy to take on whatever comes your way.

An Open Call to Colorado Community Association Managers

Make the most of your community association manager license. Colorado's current licensing program is no longer required to practice the profession. How will you stand out?

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Find out more about earning your CMCA at www.camicb.org.

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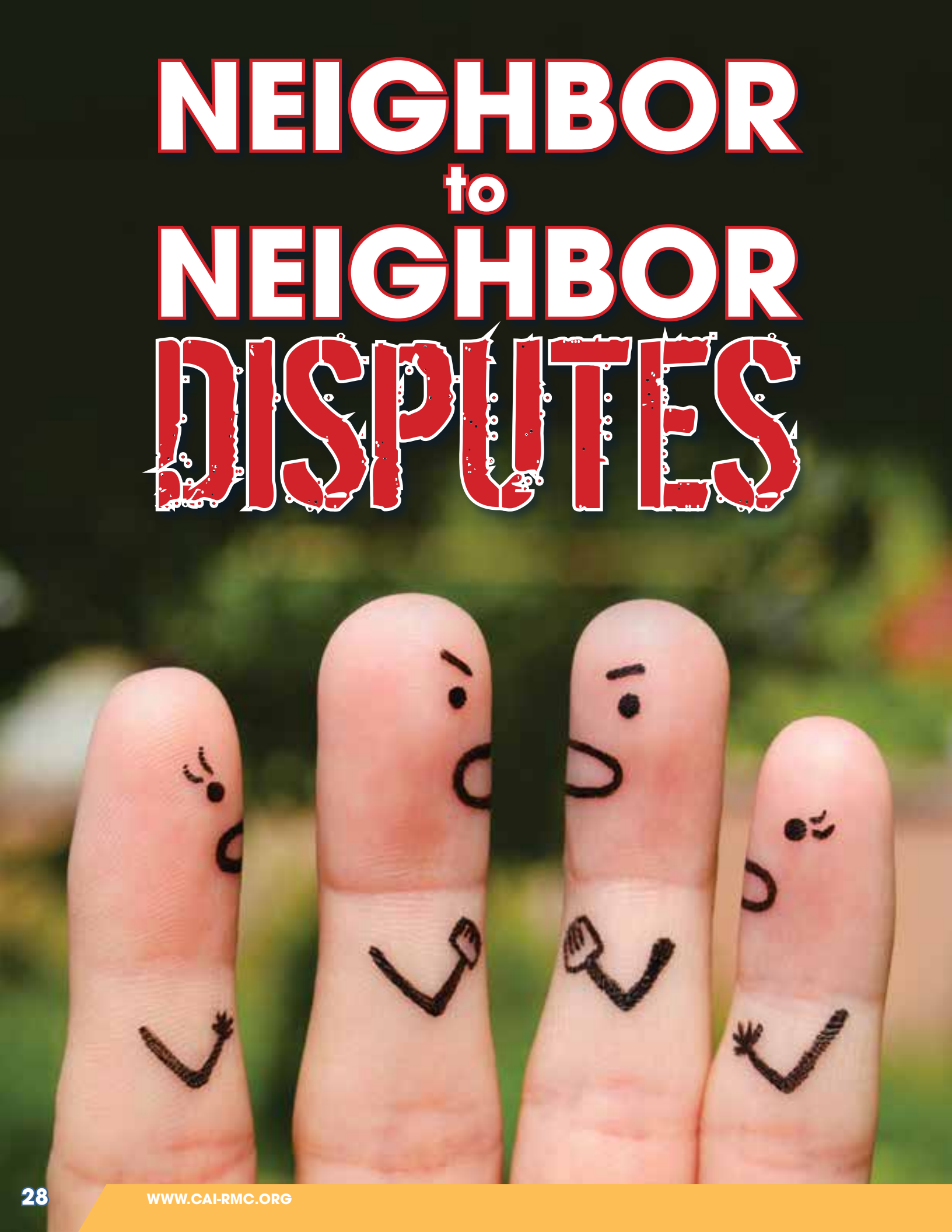
NEIGHBOR to NEIGHBOR DISPUTES



By Tim Moeller, Esq.
Moeller Graf, P.C.

As a community association attorney over the last 20 years, I have been tasked with handling hundreds of "neighbor to neighbor" disputes. These disputes come in many flavors. Some believe that their upstairs neighbor is tap dancing on the tile floor with ski boots in the middle of the night; some believe that Snoop Dogg himself must be living below them due to the amount of pot smoke drifting into their unit; others fight belligerently over dog poop. While the nature of the disputes vary wildly, one common thread runs through these types of disputes—one or more of the owners desire to have the community association step in to make their problem disappear.

Associations, through their Boards, are reticent, at best, to intercede in what appears to be a personal dispute between two homeowners. After all, why should they spend the money of the entire community to deal with some neighbors who can't seem to get along? Furthermore, are they even obligated to step into such a quagmire?

While it is easy to wipe our hands of these types of disputes and demand that the homeowners handle their own petty squabbles, community associations must not immediately ignore such complaints. Ultimately, if there exists a violation of the governing documents, which includes the rules and regulations, the Association has some level of obligation to enforce those governing documents.

A Colorado Court of Appeals case gave us some direction on the obligation of the community association to step into a dispute.1 The case arose from a homeowner who insisted on picketing within the community complaining that a builder refused to do warranty work on the homeowner's new home. The HOA was asked to prevent the homeowner from picketing. However, no action was taken for an extended period of time.

Eventually, the builder grew tired of waiting and filed a lawsuit against the homeowner. As you can guess, the HOA and its management were roped into the case as well. In the appeal it was argued, among other things, that the HOA owed a duty to the builder, who was also a lot owner, to enforce the restrictive covenants.

The appellate court ruled that covenant enforcement may require the exercise of discretion as to both the timing and the manner of enforcement. In other words, the Association is obligated to enforce its governing documents through the exercise of reasonable business judgment. While this was not a neighbor to neighbor dispute in the context that we normally see, we learned that the community association has an obligation to enforce its governing documents through the lens of the Board's business judgment.

Enforcement may fall into many categories. Many covenants contain general nuisance provisions that may require the community association to get involved with complaints pertaining to smoke intrusion and noise, for example, if they are sufficiently harmful to the enjoyment of neighboring units. If the governing documents contain covenants or rules pertaining specifically to a matter to which a complaint has been levied, the Board must take the complaint seriously and make its best business judgment as to whether it must intervene. In some instances, this judgment call should be made with the assistance of legal counsel.

Outside of violations of the governing documents, some complaints are merely about bad actors in the community who may be bullies or just plain mean. Certainly, these types of complaints can be relegated to the neighbors to work out… or can they? Some community associations may find it alarming to learn that HUD, in 2016, issued a final rule that creates liability for housing providers for occurrences of "hostile environment harassment." The rule prohibits hostile environment harassment because of a resident's protected class. It imposes direct liability on housing providers more broadly for discriminatory practices. The impact of this rule is the possible imposition of direct liability on the community association for the conduct of third parties if the association knew or should have known of the discriminatory housing practice, had the power to correct the practice, and failed to take prompt action to end such practice.

One example of the affect of this Rule on community associations is found in a case out of Washington D.C., where the condominium association paid $550,000.00 to an African-American homeowner to settle charges that the association did not go far enough to protect her from racial and sexual harassment.2 The association eventually wrote letters to the harasser, but ultimately failed to stop the outrageous and harassing behavior. The facts in the case paint a horrible picture, but suffice it to say, Boards should take seriously complaints of discrimination within the community, even if it smacks of a neighbor to neighbor dispute.

Tim Moeller is one of the founding partners of Moeller Graf, P.C. Tim currently serves on the Colorado Legislative Action Committee for the Community Association Institute.

PARKING WOES

ENFORCEMENT ON PUBLIC STREETS

Trisha K. Harris, Esq.
White Bear Ankele
Tanaka & Waldron

You live in a community with three car garages and ample driveway parking space, but your neighbor insists on filling his garage with junk and parking all of his cars on the street, some in front of your house. It may be annoying and an inconvenience to you, and maybe even an eyesore, but is it a covenant violation that your association can become involved with?

It's an age-old question that we get asked frequently in the course of our work with associations. Can an association enforce parking restrictions contained in the declaration on streets that have been dedicated to the city or the county? Unfortunately, the answer is not clear cut, courts across the country have decided the issue in differing ways. Generally, however, the following is a summary of the analysis typically followed in analyzing this question.

Are the streets part of the "community?" Review your declaration to determine what property is subject to it. If just the lots are subject to the declaration, there is a relatively good argument that the association cannot enforce the parking restrictions in the declaration on the public streets as the streets are not subject to the declaration, and therefore, not within the purview of the association's enforcement authority.

If the streets are part of the "community," when were they dedicated to the city or county? If the streets were dedicated to the city or county (typically via a dedication on the plat) after the recordation of the declaration, the argument is that the city or county took title to the streets subject to the declaration, and, therefore, the association may enforce the restrictions contained in the declaration on the streets. On the other hand, if streets were dedicated to the city or county (i.e., the plat was recorded) before the recordation of the declaration, the argument that courts have agreed to is that, because the city or county did not take the streets subject to the declaration, the association cannot enforce.

Do the parking restrictions in the declaration specifically reference parking on the streets? For example, does your declaration state that recreational vehicles shall not be parked on the streets? If so, another theory on which courts have ruled in favor of associations' authority to enforce is a contract theory. Under this theory, regardless of when the streets were dedicated, whether they are part of the "community," or otherwise, the declaration is viewed as a contract between the association and the owners. Any violation of the covenants is considered a breach of contract enforceable by the association on its own merits.

Does the city or county to which the streets have been dedicated have any ordinances or regulations regarding enforcement on its streets? Check your city's or county's ordinances to ensure that there are no restrictions against enforcement. For example, the Town of Parker has an ordinance that prohibits associations from enforcing parking restrictions on the Town of Parker's public streets if such restrictions were put in place after the date of the ordinance. If that is the case, then enforcement must be left up to the applicable city or county.

As the above discussion illustrates, enforcement of private parking restrictions on public streets is a complicated issue and one that no association should undertake without first consulting with legal counsel to discuss the above analysis, risks, liability exposure, etc.

"Can an association enforce parking restrictions contained in the declaration on streets that have been dedicated to the city or the county?"

White Bear Ankele Tanaka & Waldron was formed in 1997 to serve the needs of residential, commercial and mixed use projects throughout the State of Colorado, and in particular to provide advice and counsel to project developers, property owners and residents on a wide range of issues. The firm has extensive experience in development, construction, contracting, governmental regulations, financing, as well as matters concerning the operation and maintenance of public and private amenities. The firm represents homeowner and commercial associations, as well as metropolitan districts that are responsible for covenant enforcement and design review, operations and maintenance of common and other public areas, together with required collection activities. The firm has an experienced team of professionals dedicated to meeting the needs of the its clients in a timely and cost-effective manner.

Significant Updates to FHA Policy for Condominium Approvals

Ashley Nichols, Esq.
Cornerstone Law Firm, P.C.

Last year, the Federal Housing Administration (FHA) adopted new rules and policies regarding FHA loan approval of condominium units. One of the significant revisions allows for the approval of certain individual units in non-approved condominium projects. The policies became effective October 15, 2019.

The new condominium policy is part of a broader objective aimed at reducing regulatory barriers that currently restrict affordable homeownership opportunities. The revisions accomplish the following:

- Allows for single unit approval process to make it easier for individual condominium units to be eligible for FHA-insured financing (previously, in order to obtain financing using an FHA loan, a purchaser had to choose a unit in a project where the entire project was already approved);
- This is a major policy revision.
- Extends the recertification requirement for approved condominium projects from two to three years (additionally, those projects seeking recertification need only update new information rather than resubmit all project information); and
- Allows for more mixed-use projects to be eligible for FHA insurance.

US Housing and Urban Development Secretary Ben Carson stated, "Condominiums have increasingly become a source of affordable, sustainable homeownership for many families and it's critical that FHA be there to help them."

The policy revisions have come as a response to market indicators. The FHA's core mission is to support eligible borrowers who are ready for homeownership and are most likely to enter the market with the purchase of a condominium. Statistics show that 84 percent of FHA-insured condominium buyers have never owned a home before. Of the more than 150,000 condo projects in the US, only 6.5 percent are approved to participate in FHA's mortgage insurance programs. The FHA estimates that as a result of the new policy, 20,000 to 60,000 condominium units could become eligible each year.

So, what does that mean for our communities? As of October 15, 2019, the FHA began insuring mortgages for selected condominium units in projects that are not currently approved. In order to be approved, the following conditions must be met:

The individual condominium unit must be located in a completed project that is not currently approved; and

For condominium projects with 10 or more units, no more than 10 percent of individual condominium units can be FHA-insured; and projects with less than 10 units may have no more than two FHA-insured units.

Other revisions include loosening restrictions as follows:

- Condominium projects with owner occupancy rates as low as 35 percent will be eligible for FHA approval based on the project's financial and operational stability (FHA previously required at least 50 percent of units to be owner-occupied);
- FHA will now insure up to 75 percent of the total number of units in an approved condominium project; and
- FHA will insure more mixed-use projects (those with more commercial space) - approved projects can now have up to 45 percent of their square footage dedicated to non-residential use (the previous requirement was that no more than 50 percent of the property could be used as commercial space).

For our communities that are not currently approved, this policy revision could potentially expand the pool of buyers for your community. Condominium units are viewed more broadly as a way to provide affordable housing in many markets where detached and townhouse homes are more expensive and not accessible for first-time home buyers and others who are trying to gain access to homeownership. Dawn Bauman, Senior Vice President for Government and Public Affairs with the Community Associations Institute has stated that the policy revisions "mark a return for FHA as a key long-term partner for condominium associations."

If you have questions about the applicability of the provision to your community, make sure to reach out to your attorney to determine how the policy revisions will affect your community specifically.

Ashley Nichols is the principal and founder of Cornerstone Law Firm, P.C. She has been in the community association industry for twelve years, providing associations with debt recovery solutions for their communities. Cornerstone Law Firm represents Colorado communities in all areas of common interest community law. You may find out more at www.yourcornerstoneteam.com.

PODCASTS

What You Should Be Listening To Now

By Keely Garcia, Director of Marketing, PWF Legal

Q1 **Good Life Project—Produced by Wondery:** Weekly podcast that shares inspirational, intimate, and disarmingly-unfiltered conversations about living a fully-engaged, fiercely-connected and purpose-drenched life with an interactive website that helps with goal building connecting not only with others, but also reconnecting with yourself and finding your own needs.

Q1 **Dishing Up Nutrition—Produced by Nutrition Weight & Wellness, Inc:** Understand the connection between what you eat and how you feel. The hosts share practical, real-life solutions for healthier living through nutrition.

Q2 **Beyond The To-Do List—Produced by Erik Fisher:** Learn how to choose the right projects, tasks, and goals in work and life. You will be refreshed and inspired after hearing how others fail and succeed at daily productivity and be inspired and instructed on how to move forward yourself.

Q2 **10% Happier—Produced by ABC News:** ABC Newsman Dan Harris had a panic attack live on Good Morning America, which led him to meditation, and this podcast. This weekly podcast has Dan interviewing people from all walks of life to see if you can be an ambitious person and still strive for enlightenment.

Q3 **Eat Sleep Work Repeat—Produced by Bruce Daisley:** Work Culture. Burn Out. Innovation. Mental Health. All of these words can sound scary, but Bruce Diasley turns has scientifically proven ways to improve your work with lessons to recharge, improve sync and build buzz in your work.

Q3 **Simplify—Produced by Blinkist:** This podcast is for anyone who's looked at their habits, happiness, relationships, or their health and thought "There's got to be a better way to do this." Hear ideas from fun and engaging hosts who lay out easy to follow and motivating disciplines.

Q4 **The Anxious Achiever—Produced by HBR Presents:** Host Morra Aarons-Mele reframes how we think about anxiety and mental health in the workplace. Our culture tells those of us who suffer from anxiety and depression that we can't succeed, but we tell a different story, without sugarcoating the tough stuff.

Q4 **How To Be Awesome At Your Job—Produced by Pete Mockaitis:** Get more fun, wins, meaning, and money from your job! This show helps grow your skills and impact at any job that requires thinking and collaborating. Each week, Pete interviews thought-leaders and results-getters to discover specific, actionable insights that boost work performance.

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- Membership in your local chapter for local education and networking opportunities.
- Exclusive access to the Exchange, CAI's members-only online community where you can connect with community association colleagues from around the world to share knowledge, ask questions, and get answers.
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Self-Help & Covenant Enforcement in HOAs

Jonah G. Hunt
Orten Cavanagh & Holmes, LLC

In Colorado, community associations have a legal obligation to enforce covenants in order to protect and preserve the value of properties in the community. However, enforcing covenants is rarely as routine as it seems, largely due to a subset of owners who abide by the philosophy that rules are made to be broken or disregarded.

Associations act by and through a board of directors, whom, in the event of a violation must first determine what remedies are available under the community's governing documents (i.e. covenants, rules, etc.) and what procedures must be followed. Available remedies can include fines, suspension of an owner's voting rights or use of recreational facilities, covenant liens, self-help, mediation, and lawsuits. Of these remedies, self-help is generally the most controversial.

The governing documents should clearly authorize the association to enter onto an owner's property to correct a violation. Ideally, they would also expressly permit the association to recoup any costs it incurs. The powers of an association are delineated in the community's covenants, and if the covenants do not provide specific authority for self-help, this approach should not be undertaken. Associations should never simply assume they have this power, as having a board member, manager, or other agent enter onto an owner's property without permission could expose the association to liability. Stated differently, if an association's agents enter onto property without authorization, it could be construed as trespass, and if they remove or tamper with property, it could be theft or vandalism. The owner could call the police or get confrontational. This should be avoided.

Self-help should be utilized with restraint. Only true life, safety, and health issues warrant employing self-help. Matters that are merely an annoyance typically do not meet this standard. An association's legal authority or ability to exercise self-help does not necessarily mean that the association must take that action. Overly aggressive or rogue enforcement of covenants can lead to protracted litigation, liability exposure, hostility towards board members and the manager, and even threats of physical violence.

Because acting beyond the scope of an association's powers when employing self-help can cause adverse legal issues, the board must ensure they are not overstepping the mandates in the governing documents. For instance, associations should give their owners notice before entering onto properties, regardless of whether this is a requirement or not. If there are specific notice requirements in the governing documents, those should be followed.

So, should self-help be avoided at all costs? No, if the governing documents permit it and it is truly an emergency situation, self-help can be a valuable remedy. In other instances where an owner has not responded to multiple violation notices from the association, the association should consider legal action in the form of an injunction. Injunctive relief seeks a court order compelling the owner to comply with the covenants. If the owner fails to do so, the order would permit the association to enter onto the owner's property to correct the violation. If there is a risk of an adverse interaction with the owner, the sheriff can be asked to "keep the peace" while the remediation is being performed. Injunctive relief, including the recovery of attorney fees and costs, is authorized under Colorado law and typically under the governing documents as well.

"If the governing documents permit it and it is truly an emergency situation, self-help can be a valuable remedy."

While the legal process is lengthier than simply entering onto someone's property, it is far less risky. In addition, most owners will ultimately comply when they receive a letter from the association's attorney, even if they've ignored prior notices from the association.

If there is a truism for all community associations, it is that voluntary compliance is always preferred over self-help or litigation. When enforcing covenants, associations should always act reasonably and in the best interests of the community. The exercise of common sense is also advisable.

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Short-Term Rentals

A Brief History of Innovation, Annoyance, and Uncertainty

Marcus T. Wile, Esq.
Vial Fotheringham

Denver, Colorado played host to the 2008 Democratic National Convention and with it fifty thousand plus media members, politicos, supporters, and demonstrators descended upon a city unable to accommodate the crowd. The confluence of convention attendees and the lack of available lodging gave a fledgling little start up the perfect opportunity to soft launch what would become the juggernaut booking site Airbnb. In the intervening years, innumerable alternative sites have sprung to life and forever changed the hotel and lodging industry. Meanwhile, community associations across the state have struggled to keep up.

Short-term rentals, typically encompassing everything from nightly stays to leases of six months or less, result in a number of issues. Boisterous parties, parking issues, common area abuses, and "stranger danger" have left boards of directors attempting to regulate the issue while legislation catches up. The piecemeal municipal codes vary wildly. Many municipal codes require little more than registration and payment of relevant taxes. Others are more onerous. Denver's code, for example, requires that the property owner occupy the property as their principal residence. 1 If facing an issue with a short-term rental, it never hurts to consult the association's attorney and determine whether the short-term rental is compliant with local law. With a little luck, the local authorities may be able to address the issue. However, most short-term rental issues fall outside the scope of the local municipal code and regulation is left to the association.

One of the primary problems associations face in attempting to regulate short-term rentals is that the covenants restricting property use were often drafted long before there ever existed the technology to make the short-term rental industry possible. Without language in the declaration specifically addressing short-term rentals, associations have attempted to rely in its stead on "residential use" and "commercial use" declaration provisions or by amending the association's rules and regulations. Colorado courts have explicitly rejected these approaches.

The Colorado Supreme Court addressed such a situation in Double D Manor, Inc. v. Evergreen Meadows Homeowners' Association. The Double D Manor case involved a group home for developmentally disabled children in a single-family residential dwelling. The association argued that the group home violated the declaration's residential use restriction because the property owner generated revenue from the property. The court, however, reasoned that the group home was consistent with the residential use restriction because the children had beds of their own, shared chores, cooked and ate meals, and otherwise undertook activities at the property classically associated with residential use.

The Colorado Court of Appeals, in Houston v. Wilson Mesa Ranch Homeowners Association, Inc.3, endorsed the conclusions of Double D by stating, "that receipt of income does not transform residential use of property into commercial use." The Houston case involved an association that argued its declaration's commercial use prohibition effectively prohibited short-term rentals. The Houston court disagreed, ruling that "short-term vacation rentals such as Houston's are not barred by the commercial use prohibition in the covenants." The receipt of money is insufficient to transform the character of the use from residential to commercial. The Houston court ruled further that, "[f]or short-term vacation rentals to be prohibited, the covenants themselves must be amended … the board's attempt to accomplish such amendment through its administrative procedures was unenforceable."

Unable to rely on existing commercial or residential use restrictions in their declarations, and knowing that administrative procedures such as amending the rules and regulations is insufficient to address the issue, associations have only one viable option to address short-term rentals - amending the declaration. This recourse is mirrored in the language of the Colorado Common Interest Ownership Act ("CCIOA"). §38-33.3-205(1)(l) of CCIOA requires that, "[a]ny restrictions on the use, occupancy, and alienation of the units [must be contained in the declaration]."

Once an amendment to the declaration is in place, associations are not yet in the clear for enforcement of short-term rental restrictions. Reporting and confirmation of suspected short-term rental violations and the subsequent trials create their own level of uncertainty that associations should approach with caution.

Unless an association discovers an owner is advertising his or her unit as a short-term rental, proving that an owner has violated a prohibition against short-term rentals can be very challenging. There are many theoretical explanations of a suspected short-term rental violation that do not run afoul of the covenants. Were friends simply coming to visit for the weekend? Was someone housesitting for the owner? This means that, if it gets to that stage, actually litigating short-term rental violations can be a discovery heavy process with subpoenaing records, bank statements, and witnesses thereby driving up the cost of the litigation and the potential liability to the association if it is wrong as to the nature of the alleged violation.

In the coming years, municipalities will undoubtedly continue to refine their regulations of short-term, and the courts will also provide more insight on the regulation of short-term rentals. In the meantime, associations must proceed with caution in their enforcement efforts. Like with so many issues in associations, clear guidelines through a declaration amendment, structured procedures, and thoughtful and serious communication with suspected violators will go a long way to avoiding headaches for all persons, and association budgets, involved in uncertain litigation.

Marcus T. Wile, Esq., has been representing and advising community associations since 2018. His experience includes counseling associations in the areas of collection, interpreting and amending governing documents, contract negotiation, and covenant enforcement.

cai Advocacy Blog

AGENCY CLARIFIES WHETHER INTERNET CERTIFICATES ARE VALID AND THE TYPES OF ANIMALS THAT CAN PROVIDE EMOTIONAL SUPPORT

By Dawn Bauman, CAE

The U.S. Department of Housing and Urban Development (HUD) released guidance yesterday for individuals requesting an accommodation for an assistance animal and housing providers responding to these requests under the Fair Housing Act (FHA).

According to HUD, FHA complaints concerning denial of reasonable accommodations and disability access comprise almost 60% of all FHA complaints and those involving requests for reasonable accommodations for assistance animals are significantly increasing. These complaints are one of the most common that HUD receives.

HUD's guidance does not expand or alter housing providers' obligations under FHA or HUD's implementing regulations. It is a tool for housing providers and persons with a disability to use at their discretion. The document also provides best practices for addressing requests for reasonable accommodations to keep animals in housing where individuals with disabilities reside or seek to reside. HUD recommends its new guidance be read together with its regulations prohibiting discrimination under FHA.

The goal of the guidance is to make it easier for housing providers and individuals requesting an accommodation for an assistance animal to better understand what legal steps need to be taken to secure a reasonable accommodation, especially when discussing a disability that is not readily discernable.

A few highlights of the HUD guidance include:

Accommodation Request

While it is not necessary to submit a written request or to use the words "reasonable accommodation," "assistance animal," or any other special words to request a reasonable accommodation under the FHA, persons making a request are encouraged to do so in order to avoid miscommunications.

Certain impairments, however, especially including impairments that may form the basis for a request for an emotional support animal, may not be observable. In those instances, a housing provider may request information regarding both the disability and the disability-related need for the animal. Housing providers are not entitled to know an individual's diagnosis.

Documentation From The Internet

Some websites sell certificates, registrations, and licensing documents for assistance animals to anyone who answers certain questions or participates in a short interview and pays a fee. Under the Fair Housing Act, a housing provider may request reliable documentation when an individual requesting a reasonable accommodation has a disability and disability-related need for an accommodation that are not obvious or otherwise known. In HUD's experience, such documentation from the internet is not, by itself, sufficient to reliably establish that an individual has a non-observable disability or disability-related need for an assistance animal.

By contrast, many legitimate, licensed health care professionals deliver services remotely, including over the internet. One reliable form of documentation is a note from a person's health care professional that confirms a person's disability and/or need for an animal when the provider has personal knowledge of the individual.

Type Of Animals

HUD also clarifies the types of animals that may be associated with emotional support or other assistance. The guidance differentiates between animals that are typically found in households (dogs, cats, etc.) and "unique" animals that do not typically live in a home, such as livestock. An individual seeking a reasonable accommodation for a "unique" animal will face a "substantial burden" in demonstrating how this animal directly meets a disability related need.

CAI will continue to study these guidance documents. We are committed to preparing additional resources for members to understand and use as they consider accommodation requests.

Congratulations Recent Designation Recipients

Congratulations to our newest credentialed professionals! CAI credentials help ensure that your manager has the knowledge, experience and integrity to provide the best possible service to your association. Earning a CAI credential demonstrates an elevated commitment to their professional education—and your community's welfare.

CAI-RMC is proud of the following individuals who have demonstrated a personal commitment to self-improvement and have elevated their practical knowledge and expertise:

Name	City	Organization	Designation	Award Date
Terra Lee Mueller, CMCA	Broomfield	CCMC	CMCA	12/27/2019
Cynthia Gould, CMCA	Castle Rock	Hammersmith Management, Inc.	CMCA	12/09/2019

If you are a manager, insurance and risk management consultant, reserve provider, or business partner wishing to enhance your career, the information at www.caionline.org can help you. CAI awards qualified professionals and companies with credentials to improve the quality and effectiveness of community management.

Smoke Migration in Community Associations

Is it possible to put out this fire?

by Molly Foley-Healy, Esq.
Winzenberg, Leff, Purvis, and Payne

Whether you are a homeowner, serve on the board of directors of your community association, manage, or are an attorney specializing in community association law, it's probably a safe bet that you either have experienced smoke migrating in your community or are dealing with complaints about it. While years ago tobacco was the primary type of smoke which migrated between units or onto the common elements, today we can add marijuana smoke and the vapors which are exhaled by folks who are smoking e-cigarettes or using other vaping devices to the list.

Years ago, when I first started receiving requests from clients for guidance on how to address issues relating to smoke migration, I mistakenly assumed that this was a problem that could only be experienced in older or poorly built condominiums. While it's true that smoke migration is largely an issue experienced in stacked condominiums or homes attached by party walls of any age or quality of construction, I have also found that smoke migration onto the common elements can also be an issue in single family home communities where the homes are built very closely together.

Adopting Rules Regulating Smoking on the Common Elements

While smoke migration is largely an issue in condominiums and communities with attached homes, it's important to understand that boards in any type of common interest community in Colorado have the legal authority to adopt rules regulating smoking and vaping on the common elements, which includes the limited common elements.

In deciding whether to adopt rules regulating smoking on the common elements in your community, here are some questions each board of directors should consider:

1. Is smoking on the general common elements a problem in our community? Are smokers properly disposing of cigarette butts? Should the association provide receptacles on the general common elements for disposing of cigarette butts? Is smoking on the general common elements making it difficult or impossible for non-smoking residents in our community to also use and enjoy the general common elements? If there are issues with smoking on the general common elements, what are the least restrictive rules we could adopt to reasonably address these issues?
2. Is smoking on the limited common element decks or patios causing problems in our community? Is smoking on decks or patios causing smoke to migrate onto other decks, patios, or into the windows of neighboring units? Is smoking on decks or patios migrating to such an extent that it is making it difficult or impossible for others to use and enjoy their patios, decks or even their unit? If there are issues relating to smoking migrating from patios and decks, what is the least restrictive rule we could adopt to address these issues?
3. Whenever the board is considering adopting a rule, remember that you must be willing to enforce the rule, it must be reasonable, and it cannot trump a provision of your association's declaration.

Treating Smoke Migration as a Nuisance

In addition to adopting rules to regulate smoking on the common elements, most declarations of common interest communities have a provision which regulates or prohibits nuisances in the community. Depending upon the particular facts of a smoke migration complaint from a resident, the overwhelming and offensive smell of the migrating smoke, and the negative health effects of the smoke can adversely impact the use and enjoyment of their unit and the common elements.

If there is sufficient information in the complaint to establish that there may be a smoke migration nuisance, the board of directors and management should follow their enforcement policy to give notice of the alleged violation and consider the option of levying fines for this offense. However, associations are not permitted under Colorado law to levy fines unless they have an enforcement policy in place which provides notice and an opportunity for a hearing prior to levying the fine and the fine schedule is included in the enforcement policy.

In extreme cases, where a resident is so addicted to smoking that they just pay the fines and continue to create the smoke-related nuisance, the levying of fines will not fix the problem. In such cases, associations should consult with their legal counsel to determine whether it makes sense to file a lawsuit against the violating resident to compel their compliance with the nuisance provision of the declaration. Your legal counsel will be able to advise you on the strength of the association's case, what steps the association should take to build the case, the costs of pursuing legal action, and the likelihood of success.

Under Colorado law, owners also have the authority to enforce the nuisance provision of the declaration against the violating resident. However, before passing off the enforcement obligation to the resident who is being adversely impacted by the smoke, the board of directors should consult with legal counsel about their obligation to enforce the nuisance provisions of the declaration on behalf of the resident being affected by the migrating smoke.

Amending the Declaration to Create a Smoke-Free Community

In some condominium communities, the construction of the condominiums may make it nearly impossible to stop smoke from migrating between the units or onto the common elements. In these cases, boards of directors can consider creating a smoke-free community by prohibiting smoking in the units and on the common elements. As discussed above, through the adoption of a rule, boards have the authority to regulate smoking on the common elements – which can include prohibiting smoking on the common elements. However, this rulemaking authority does not extend to prohibiting smoking in the units which would have to be accomplished through an amendment to the declaration of your community.

When contemplating whether to propose an amendment to the declaration creating a smoke-free community, boards of directors should consider the following:

1. Should owners and residents of condominium units at the time the amendment becomes effective be grandfathered

in? In other words, should these folks be permitted to continue to smoke in their units as long as no smoke migration complaints are submitted to the association?

2. Even though smoking on the common elements can be regulated through rulemaking, is there any need to prohibit smoking on the general common elements or limited common elements and should this be included in the amendment to the declaration?
3. Should a location be designated on the common elements where folks are permitted to smoke?

While on its face creating a smoke-free community may sound like a great solution, amending the declaration may not be so easy. From a purely political perspective, owners may feel that amending the declaration to prohibit smoking in the community is too extreme to approve. Assuming you can get over this political hurdle, you may run into issues with determining what the consent requirement is to approve such an amendment and whether you are able to obtain the required consents.

Since amending the declaration to create a smoke-free community would be classified as amending an existing use restriction or creating a new one, the requirements to amend the declaration of your community can become complicated. Amendment requirements for use restrictions can be based upon when the declaration for your community was originally recorded. As a result of this complexity, it is essential to consult with your legal counsel to determine the amendment requirements for your community, to discuss the scope of the amendment, and to have your counsel draft the amendment and documents to utilize for the approval process.

If the board of directors for your community decides to propose an amendment to the declaration creating a smoke-free community and it is approved, remember that the current board and all future boards will be required to enforce the requirements in the amendment creating the smoke-free community. Individuals purchasing a unit in these communities will be relying upon the fact that the community has been designated as smoke-free. A refusal by directors to enforce these requirements could result in a lawsuit against the board and individual directors for breach of fiduciary duty. As a result, proposing an amendment to the declaration to create a smoke-free community should not be taken lightly.

Stopping the migration of smoke in community associations is no easy task. However, the tools outlined in this article will give boards and management a good starting point in considering how to best tackle this issue in your communities. Just remember that as long as they are effective, utilizing the least restrictive and most easily enforceable means to stop the migration of smoke will be your best bet.

Molly Foley-Healy is an attorney specializing in community association law, is a Fellow of the College of Community Association Lawyers and practices with the law firm of Winzenburg, Leff, Purvis & Payne.

Welcome New Members

Caroline Bell — Gold Peak Homeowners Association, Inc.
Charlotte M Brantley — Genesee Foundation
Erica Burr — Lindenwood Homeowners Association
Reilly Chunn — Reilly Chunn Insurance, Inc.
Deborah R Cowan
Cindy Crescenzo — The Aspens Townhomes
Brandon Cupp — The Aspens Townhomes
Michelle Dilley — True View Windows & Glass
Wendy Dix — R W & Associates, PC
Jane Doyle — Windsor Gardens Association
Lee Durham, III — TXT2VOTE
Maurice Edgerton — The Aspens Townhomes
Bill Fisher — The Conservatory Homeowners Association
Shirley M Forbes, CMCA — Colorado Association Services — Lakewood
Sam Gallegos — Lindenwood Homeowners Association
Ann Haehn — Gold Peak Homeowners Association, Inc.
Dr. John Hanck — Lindenwood Homeowners Association
Dean Harris — The Conservatory Homeowners Association
Justin Heckmaster — Hammersmith Management, Inc.
Doug Heiser — Gold Peak Homeowners Association, Inc.
James Higley — Third Cherry Creek Townhouse Corporation
Steve Horst — ClickPay
Dillon James Iarussi — Blue Spruce Construction Group, Inc.
Lala Jacoby — Crystal Lakes Road and Recreation Association
Jane Johnson — Gold Peak Homeowners Association, Inc.
Kendell Johnson
Spencer Kelly Liles — BoulderHOA
Mike Lopez — Windsor Gardens Association
Jennifer Lowther — The Colorado Property Management Specialists
Miss Sandra MacTavish — Gold Peak Homeowners Association, Inc.
Patti Maestas — The Conservatory Homeowners Association
Jillian Marquis — Retreatia
Ned Mataraso — Renewal by Andersen of Colorado
Board Member — Crystal Lakes Road and Recreation Association
Michael Mink — HBS Trash
Ryan Modisette — Hammersmith Management, Inc.
Jason Montgomery — Painting Plus
Kerri Neidlinger — Community Association Insurance Solutions, LLC
Carol O'Meara — Gold Peak Homeowners Association, Inc.
Charles A. Parsons, II — Hammersmith Management, Inc.
Eric Scott Prosser — Centennial Realty Advisors, LLC
Jessica Ramos Gomez — Associa Regional Office—Lakewood
Roni Reynolds — Windsor Gardens Association
Ernest Ronquillo — Associa Regional Office—Lakewood
Joel Sebern — Colorado Residential & Commercial Roofing Inc
Ben Smith — Capital Consultants Management Corporation
Pam Smith — Veranda Townhomes
Colin Swaysland — Walker Consultants
Jillian Ujvary — Associa Regional Office—Lakewood
Walter Weart — Clear Creek Property Management LLC.
Ryan Whimpey — ARI Designs
Jaime Williamsberg, CMCA

COMMON INTERESTS

Editorial Calendar

Issue	Topic	Article Due Date	Ad Due Date
Issue 2	Maintenance / Preventative/Upgrades	02/15/2020	03/01/2020
Issue 3	Insurance / Ethics	04/15/2020	05/01/2020
Issue 4	Finance	06/15/2020	07/01/2020
Issue 5	Tech / Modernization	07/15/2020	09/01/2020
Issue 6	Planning Ahead / Goals / Community Vision	10/15/2020	11/01/2020

Rule 30(b)(6) Deposition

Trip Nistico
Burg Simpson Eldredge Hersh & Jordine, P.C.

In construction defect lawsuits brought by HOAs, it is not uncommon for the defendants (often the developer and builders of the community) to request to take a deposition of any property management company that has worked with the association. These depositions of companies—as opposed to individuals—are referred to as 30(b)(6) depositions because they are governed by Rule 30(b)(6) of the Colorado Rules of Civil Procedure.

Because property management companies are unlikely to be a named party in a construction defect lawsuit, non-party property management companies that have received a Rule 30(b)(6) deposition notice often question whether they must comply with such a request. While this is somewhat of an open question under Colorado law, federal courts interpreting Rule 30(b)(6) of the Federal Rules of Civil Procedure—which is identical to the Colorado rule[1]—have held that both parties and nonparties must comply with Rule 30(b)(6).[2] Nonparties, however, will only be required to submit to a 30(b)(6) deposition if they were properly subpoenaed.[3]

A property management company that receives a valid Notice under Rule 30(b)(6) is expected to designate one or more witnesses who can speak to the organization's "knowledge" on a list of potential deposition topics that will be included in the Notice.[4] In theory, what the organization "knows" is a combination of the information learned by its officers, directors, agents, employees, or others, as well as other knowledge residing in the company's records.[5]

It is not unusual, however, that a property management company no longer employs any of the individual property managers that worked with the HOA. But even if the property management company no longer employs any individuals with first-hand knowledge of the deposition topics, the company is expected, if reasonably possible, to "create" a witness or witnesses from information reasonably available to the company.[6] The company may not simply respond that there is no witness available who has personal knowledge concerning the areas of inquiry.[7] Nor may it simply designate a witness that will not be reasonably prepared to provide relevant information on the designated topics.[8]

Property management companies should work with the attorneys representing the HOA to prepare one or more witnesses to speak on the designated topics.[9] These attorneys will be able to determine if the company was properly subpoenaed, who should be designated as deposition witnesses, how best to prepare the witness, and whether a protective order (explained more below) should be sought.

A company that fails to take its Rule 30(b)(6) obligations seriously puts itself at risk. Rule 30(b)(2) allows courts and arbitrators to issue various sanctions against companies that fail to comply with these obligations. Possible sanctions include:

- Holding the company in contempt of court[10]
- Requiring the company to pay any reasonable expenses, including attorney's fees, that the party issuing the 30(b)(6) Notice incurred because of the company's noncompliance[11]

Who can be designated as a witness in a Rule 30(b)(6) deposition?

Rule 30(b)(6) states that a corporation or other entity may designate any officer, director, managing agent, or any "other person[] consenting to appear and testify on its behalf with respect to the matters reasonably available to the organization."[12]

This includes former employees who consent to serve as witnesses—particularly when no current employees have relevant firsthand knowledge of the events in question.[13] However, while a company may designate consenting former employees in these situations, it is not required to do so. "The burden under C.R.C.P. 30(b)(6) is to produce witnesses who are knowledgeable, not to produce an exhaustive list of witnesses to testify as to each and every factual assertion made by an organization."[14]

The company is not required to designate a witness with first-hand, personal knowledge of the designated topics.[15] The designated witness just needs to be reasonably prepared.[16] This could be accomplished by simply interviewing the former employees with firsthand knowledge and relaying that information in the deposition.[17]

If there is nobody inside the company that has relevant knowledge of the deposition topics, it may be appropriate to designate somebody outside of the company. Courts have allowed companies to designate outside consultants as 30(b)(6) deposition witnesses. In one case, a federal court allowed an entity to designate one of its litigation attorneys as a Rule 30(b)(6) witness.[18]

While there is risk in designating an attorney that is directly involved in the litigation as a Rule 30(b)(6) witness—as it is possible that this attorney would later be disqualified from representing any party in the trial[19] —the fact that courts have allowed this shows that a company can designate practically anybody as its 30(b)(6) witness. In fact, it is likely that most courts would allow the same person to be designated as the Rule 30(b)(6) witness for both the HOA and a property management company that managed it, as long as this witness has completed the necessary preparation to answer on behalf of both entities.

In addition, nothing in Rule 30(b)(6) precludes the company from providing "contrary or clarifying evidence" when a designated witness

either does not remember or misstates facts in the deposition.[20] This could include designating additional 30(b)(6) witnesses,[21] providing affidavits and other evidence,[22] and, if necessary, subpoenaing witnesses with relevant information that were unwilling to serve as a 30(b)(6) witness.[23] It is still crucial, however, to make sure each witness is as prepared as possible, as each witness's testimony—even if later supplemented or corrected—can still be used in litigation.24

Note on the "Apex" Doctrine:

Challenges based on who companies designate as 30(b)(6) witnesses are almost always unsuccessful: there is no requirement, for instance, that the entity designate an employee of the company or someone with first-hand knowledge of relevant facts.[25] Sometimes, defendants will seek to depose a CEO or other high-level officer of a company (often referred to as "apex" depositions because these officers are at the apex of the corporate hierarchy) that was not designated as a 30(b)(6) witness—even when these officers have no relevant information to provide. In these situations, courts will sometimes step in to prevent these depositions under the "Apex doctrine."[26]

Although officers of a corporation are not immune from being deposed, apex depositions are potentially harassing, particularly where apex officers have little or no relevant information.[27] Courts are therefore likely to grant a protective order under Rule 26 to prohibit depositions of senior officers with little or no relevant information.[28]

To overcome this doctrine, the party seeking to depose the high-level officer must show that (1) the official has "unique or superior" personal knowledge of relevant information, and (2) that there is no less-intrusive way the party could obtain this information.[29] It is unlikely that a party could establish that a high-level officer of a property management company that did not manage the HOA involved in the construction defect lawsuit has "unique and superior" personal knowledge of relevant information that cannot be obtained by other means.

What if it is impossible to prepare a witness to testify on the designated topics?

Sometimes, after reviewing all available documents that might contain information relevant to the designated deposition topics, and after interviewing (or attempting to interview) any former employees or others who might have relevant information, the organization is still not able to prepare a witness to that can testify on these topics. When that is the case, the company (through assisting legal counsel) should inform the party that requested the deposition that it will not be able to produce a witness to testify on those topics, and it should do so well before the deposition.[30]

If an agreement cannot be reached with the other party's attorneys, the attorney advising the company may then seek a protective order.[31] If the company convinces the judge or the arbitrator that it has no reasonable means of preparing a witness to testify on one or more of the designated topics, the judge or arbitrator may grant a protective order, excusing the company from being deposed on these topics and from any related sanctions.[32]

It is important, however, that a company that finds itself in this situation seeks a protective order before the deposition. Where the parties are unable to agree to narrow the deposition topics, the failure to seek court clarification before the deposition begins could result in the judge or arbitrator finding that the company waived any objections to the scope of the deposition topics.[33] On the other hand, judges have generally been willing to strike topics that were overbroad or not specific enough when they were presented with this issue before the deposition.[34]

Conclusion

Rule 30(b)(6) depositions can be burdensome for any company. Determining the best response to a 30(b)(6) Notice requires familiarity with the applicable rules and the experience to know how to conduct a proper investigation, who to designate as the witness or witnesses, how to prepare these witnesses, and if any challenges should be brought.

While these obligations are burdensome, companies risk incurring significant penalties—and even liability—if they ignore these obligations by either failing to produce a witness or producing a witness who is unprepared. Even property management companies that managed the HOA years before the lawsuit began should take these obligations seriously and either work with the HOA's legal counsel or other legal counsel that is familiar with these matters.

1. D.R. Horton, Inc. v. D&S Landscaping, LLC, 215 P.3d 1163, 1167 (Colo. App. 2008) (noting that federal decisions interpreting Fed R. Civ. P. 30(b)(6) are highly persuasive in Colorado courts because Colorado decisions interpreting C.R.C.P. 30(b)(6) are sparse and because the federal rule is "identical" to the Colorado rule).
2. See, e.g., Price Waterhouse LLP v. First Am. Corp., 182 F.R.D. 56, 61 (S.D.N.Y. 1998).
3. See, e.g., Estate of Esther Klieman v. Palestinian Auth., 293 F.R.D. 235, 245 (D.D.C. 2013). For the rules governing subpoenas in Colorado, see C.R.C.P. 45, which is similar—but not identical—to the federal rules governing subpoenas discussed in Klieman.
4. See Martin D. Beier, Organizational Avatars: Preparing CRCP 30(b)(6) Deposition Witnesses, 43 COLO. LAW. 39, 39 (Dec. 2014).
5. Id.
6. See id.
7. D.R. Horton, 215 P.3d at 1168.
8. See id. at 1167.
9. Or, if the HOA is the party seeking to depose the property management company, the company may prefer to work with the attorneys representing the developer. This may be the case where the property management company primarily worked with the HOA prior to turnover or where the developer has claimed that the property management company was its agent.
10. While arbitrators do not have the authority to issue contempt citations (see C.R.S. § 13-22-217(4)), it is possible that this matter could be referred to a judge who has such authority.
11. See C.R.C.P. 37(b)(2)(A)–(E) for the complete list of possible sanctions.
12. C.R.C.P. 30(b)(6) (emphasis added).
13. See D.R. Horton, 215 P.3d at 1168.
14. Camp Bird Colo., Inc. v. Bd. of County Comm'rs of Ouray, 215 P.3d 1277, 1290–91 (Colo. App. 2009).
15. See, e.g., Reed v. Bennett, 193 F.R.D. 689, 692 (D. Kan. 2000).
*16. ACE USA v. Union Pac. R.R. Co., Inc., 2011 U.S. Dist. LEXIS 80793, at *9 (D. Kan. July 25, 2011).*
17. See D.R. Horton, 215 P.3d at 1169.
18. Cartier v. Bertone Group, Inc., 404 F. Supp. 2d 573. 574 (S.D.N.Y. 2005), injunction granted, 2005 U.S. Dist. LEXIS 35053 (S.D.N.Y. Dec. 20, 2005).
*19. See New Jersey Spring Corp., 2010 U.S. Dist. LEXIS 14890, at *14 (D. Kan. Feb. 19, 2010).*
20. Camp Bird, 215 P.3d at 1291.
21. See Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co., 251 F.R.D. 534, 542 (D. Nev. 2008).
22. See D.R. Horton, 215 P.3d at 1170.
23. See id. at 1169.
24. See id. at 1170.
25. See Reed v. Bennett, 193 F.R.D. at 692.
*26. See, e.g., Jones Co. Homes, LLC v. Laborers Int'l Union of N. Am., 2010 U.S. Dist. LEXIS 136911, at *6 (E.D. Mich. Dec. 28, 2010).*
27. 1 Discovery in Construction Litigation P 7.01 (2019).
28. See id., n. 1.4 (citing cases and other authority and providing additional information about this doctrine).
*29. See, e.g., Jones Co. Homes, 2010 U.S. Dist. LEXIS 136911, at *6.*
30. See Calzaturficio S.C.A.R.P.A., s.p.a. v. Fabiano Shoe Co., 201 F.R.D. 33, 38 (D. Mass. 2001).
31. Dongguk Univ. v. Yale Univ., 270 F.R.D. 70, 74 (D. Conn. 2010); C.R.C.P. 26(c).
32. See D.R. Horton, 215 P.3d at 1169–70.
*33. See Int'l Brotherhood of Teamsters, Airline Div. v. Frontier Airlines, Inc., 2013 WL 627149, at *6 (D. Colo. Feb. 19, 2013).*
*34. See, e.g., Stransky v. HealthOne of Denver, Inc., 2013 WL 140632, at *2–3 (D. Colo. Jan. 11, 2013).*

Educated Business Partner Distinction

21.1

Percent of U.S. population in community associations

$85 billion

Assessments collected from homeowners. Assessments fund many essential association obligations, including professional management services, utilities, security, insurance, common area maintenance, landscaping, capital improvement projects, and amenities like pools and club houses.

$23 billion

Assessment dollars contributed to association reserve funds for the repair, replacement and enhancement of common property, e.g., replacing roofs, resurfacing streets, repairing swimming pools and elevators, meeting new environmental standards and implementing new energy-saving features.

30–40

Percentage of community associations that are self-managed, meaning they may use professional assistance for specific projects, activities and services, but do not employ a professional manager or management company.

CAI Business Partners are indispensable to the community associations they support with their guidance, products and services. CAI education helps these businesses and professionals differentiate themselves in the competitive community association marketplace.

We congratulate CAI members who take the time and effort to complete the CAI Educated Business Partner online course. This achievement demonstrates a personal and corporate commitment to industry-specific education. It also reflects a desire to understand not just their own business clients, but also the nature and challenges of community associations in general. CAI applauds this accomplishment.

The following Business Partner members of CAI Rocky Mountain chapter have taken the online course to better understand CAI, community associations and the industry at large. These individuals continue to gain special recognition among thousands of companies and professionals who support common-interest communities.

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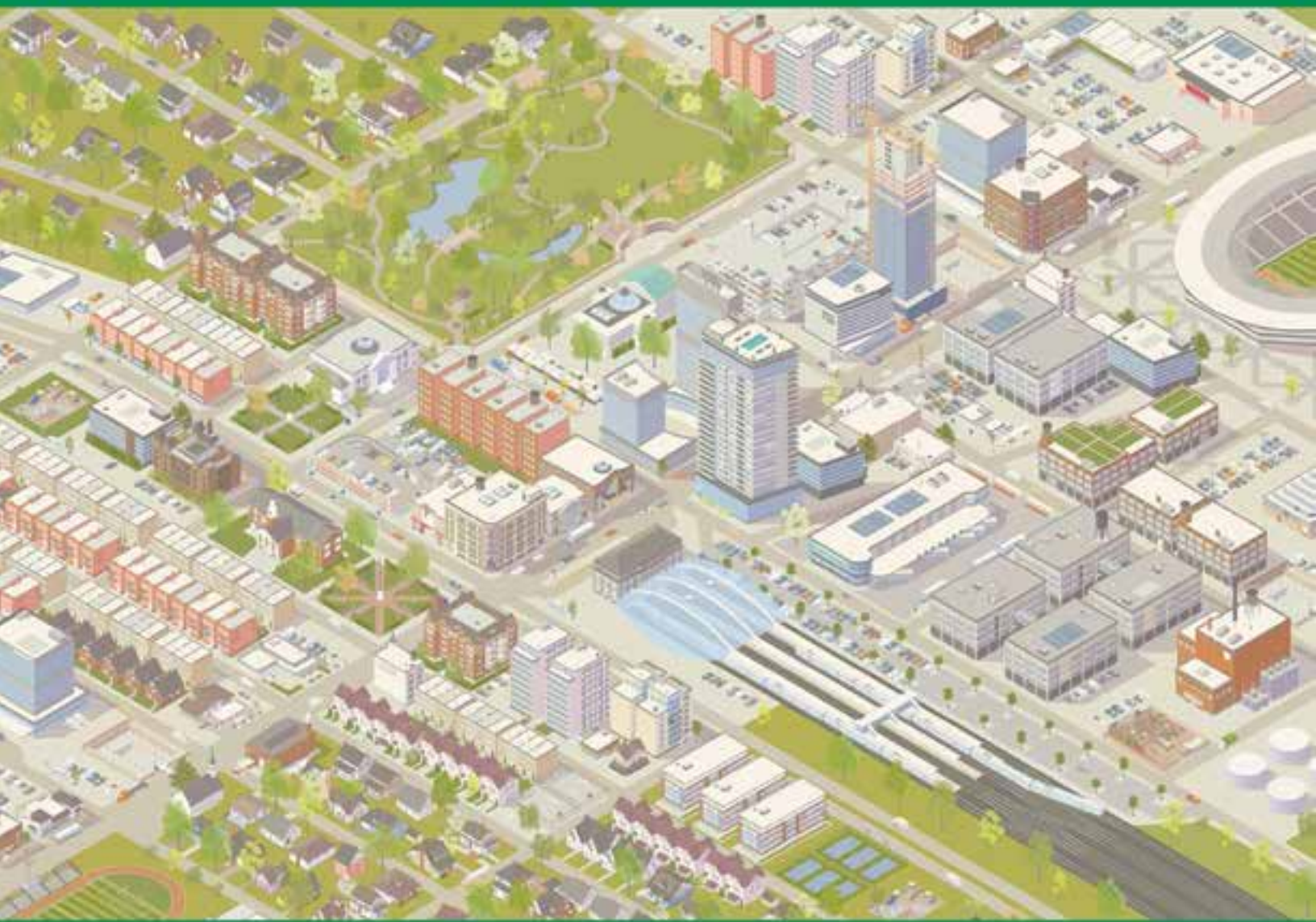
COMMUNITY ASSOCIATIONS REMAIN POPULAR WITH AMERICAN HOMEOWNERS



2018 HOMEOWNER SATISFACTION SURVEY

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Community Associations: Preferred Places to Call Home
The results are in!

For the seventh time in 13 years, Americans living in homeowners associations and condominiums say they're overwhelmingly satisfied in their communities:

85% of residents rate their overall community association experience as positive (63%) or neutral (22%).

84% say members of their elected governing board "absolutely" or "for the most part" serve the best interests of their communities.

73% say their community managers provide value and support to residents and their associations.

90% say their association's rules protect and enhance property values (62%) or have a neutral effect (28%); only 4% say the rules harm property values.

These findings objectively refute the unfounded and unsubstantiated myth that the community association model of governance is failing to serve the best interests of Americans who choose to live in common-interest communities.

Results from almost identical national surveys conducted in 2005, 2007, 2009, 2012, 2014, 2016, and 2018 are strikingly consistent and rarely vary a standard margin error for national, demographically representative surveys.

The 2018 survey was conducted by Zogby Analytics for the Foundation for Community Association Research.
The following illustrations compare results from the seven surveys conducted since 2011. Totals may not equal 100 percent due to rounding and "don't know" answers.

For more information and data about community associations, visit www.caionline.org/aboutcommunity associations

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MARCH	
31 Tue	**Spring Showcase & Trade Show**

APRIL	
23–25 Thu–Sat	**M100** Denver
28 Tue	**CEO Forum (2)**

MAY	
2 Sat	**Board Leadership Development Worshop—Full Day**
5 Tue	**Annual Education Summit**
12 Tue	**Mountain Education** Frisco

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Don't forget to register for events as prices are significantly higher the day of the event.