

Vol. 34 • No. 5 • May 2016

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**GOLF
TOURNAMENT**
See Insert
after Page 16

COMMON INTERESTS

Limiting Your Liability

INSIDE:

Liability of Board & Managing Agents
Liability of Self-Management
Alternative Dispute Resolution
Client Interviews
And More!

ROCKY MOUNTAIN CHAPTER
community
ASSOCIATIONS INSTITUTE

the homeowners we serve



Homeowners are CAI's largest member group, comprising a large percentage of our 33,000-plus members. For the most part, these are the homeowners who have chosen to be leaders in their communities—serving on association boards and committees or volunteering for special projects. Some simply rely on CAI to stay informed about how their communities should be governed and managed.

CAI strives to serve homeowners who have or probably will step up to the plate to serve their communities and fellow residents. The benefits we provide to them—from *Common Ground* magazine and our specialized newsletters to web content and educational opportunities—are developed for these leaders.

While we do provide information for all HOA residents—including our online course, *An Introduction to Community Association Living*—our focus is on community associations and those who lead them, especially the more than two million residents who serve on association boards and committees. By supporting community leaders, we are making communities preferred places to live for all residents.

Our primary mission is to help homeowner leaders and professional community managers protect property values, preserve the character of their communities and meet the established expectations of all residents.

Our education inspires effective governance and management. Our best practices help leaders build and sustain more harmonious communities. Our advocacy promotes practical legislative and regulatory policies. Our ethics guidelines inspire fairness, transparency and integrity.

That's how we serve all community association residents, even as we strive to preserve and enhance the concept, perception and value of common-interest communities.

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COMMON INTERESTS

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President's Message



CARMEN STEFU

President
CAI-RMC

What a busy time our Chapter has already had this spring! It was great to see so many of you at the **Spring Showcase** in April. This is the largest event our Chapter holds and, as always, our members did not disappoint! It was also great to see so many of you embrace this year's derby team and see so many beautiful hats, outfits, etc. Thank you all for participating!

I am also proud to announce that our Chapter has received an achievement award for best Net Growth (10%) in a calendar year for a very large Chapter! **I, Denise Haas**, President Elect and **Bridget Sebern**, Chapter Executive Director will accept this award at the 2016 CAI National Conference in Orlando, Florida. We are very excited about this award! Congratulations CAI Rocky Mountain Chapter!

Finally, as we celebrate our 40th year anniversary, I want to thank every one of you who participates in our Chapter in one fashion or another. Our volunteers are tremendous to work with and your efforts are truly appreciated! 🏠



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Executive Director's Message



BRIDGET SEBERN
Executive Director
CAI-RMC

Wow! That's what I've heard from so many people who attended the **2016 Spring Showcase and Trade Show**. Attendees and exhibitors alike felt very excited and revived after a fun Friday at the Colorado Convention Center. If you haven't filled out your survey yet, which was sent via email, make sure you do. It helps the committee design future programming and address any concerns. **The Spring Showcase committee** did a fantastic job and I am excited to see what

they come up with next year!

For those of you that attended, I hope you found the time to visit our various CAI booths (CAI National CAI-RMC and CAI-SoCo). Our goal in having these booths was to bring awareness to CAI in general as well as a better understanding of our state Chapters. We were so happy to have representatives from the National office and Southern Colorado present and willing to work their booths. They answered so many questions and it certainly seems like people now have a better understanding of the "big picture".

We have a lot of great events coming up—make sure to check them out at www.cai-rmc.org. For access to the full picture catalog from Spring Showcase please visit our Facebook page—we have a glimpse of some of the fun on page 8.

Have a great month and be well. 🏠



"We were so happy to have representatives from the National office and Southern Colorado present and willing to work their booths. They answered so many questions and it certainly seems like people now have a better understanding of the 'big picture'."



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Deadline: First of each month for the following month's issue.

NOTE: All ads must be camera ready or additional charges will apply. All ads must be prepaid. Advertising in *Common Interests* is a benefit of membership, and you must be a member to advertise. Acceptance of advertising in this magazine does not constitute endorsement of the products or services. Rates available upon request. Email bridget@hoa-colorado.org.

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ACTIVITIES COMMITTEE



Attention CAI members! **Grab your caddy** **(or pull your golf clubs out of the closet),** **and get ready to hit the links!**

The annual CAI Colorado golf tournament is just around the corner. Mark your calendars, this year's outing is **June 24, 2016** at **Todd Creek Golf Club**. This is an awesome new venue for 2016 & 2017! Todd Creek features a variety of terrain with exceptional course features and incredible scenery and views of Colorado's natural beauty.

Participants are provided an opportunity to experience another amazing golf course as well as a day of fun and excitement. The golf tournament is also an excellent way to meet and mingle with fellow CAI members, enjoy a day away from the office, win prizes, and show your support for CAI!

In addition to a fun round of golf, this year's tournament includes a new putting contest with opportunities to win great prizes and support the Colorado Legislative Action Committee (CLAC). Breakfast and lunch is included, so sign up now!

Limited sponsorship opportunities are still available. Business partners interested in being a sponsor for this year's event should contact Bridget Sebern at bridget@hoa-colorado.org for additional information.

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Successful managers must possess knowledge and skills relating to association governance, financial and facilities management, communications, insurance, maintenance and much more.

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Liability of Boards of Directors;



Liability of Managing Agents



Mark Payne,
Winzenburg, Leff,
Purvis & Payne, LLP

Duties of Directors and Liability for Failure to Carry Out Those Duties

We frequently talk about directors' "fiduciary duties" to their associations and their members. While CCIOA clearly says that declarant appointed directors have fiduciary duties to their associations and its members, it also seems to say that non-declarant directors do not have a fiduciary duty (it says no director nor officer shall be liable for actions taken or omissions made in performance of such person's duties except for wanton and willful acts or omissions). Nevertheless,

Colorado courts continue to talk in terms of fiduciary duties owed by association directors to their associations and its members. So what is a fiduciary duty?

It is the duty to act in with the utmost loyalty toward the association, in good faith, and in the best interests of the association. Evaluating fiduciary duty is often done on a case by case basis, and depends on the facts in each case. However, there are certain things that every director should do to make sure he/she is carrying out his/her fiduciary duty. These include the following:

- Read and follow the associations governing documents —declaration, articles of incorporation, bylaws, rules, regulations, guidelines and policies;
- Be familiar with whether action can be taken outside of board meetings, and if so, how;

- Make sure all meetings, other than executive sessions, are open to all owners, and make sure the executive sessions are only conducted to address the issues allowed by CCIOA;
- Exercise business judgment when making decisions;
- Avoid conflicts of interest;
- Obtain advice and opinions of experts concerning matters that are beyond the general nature of the board's knowledge;
- Maintain meeting minutes approved as to form and content;
- Obtain professional assistance when negotiating contracts;
- Act in accordance with contracts;
- Maintain copies of all contracts;
- Make sure the association has appropriate insurance;
- Make sure your management company has appropriate insurance;
- Maintain copies of all insurance policies;
- Require certificates of insurance directly from the vendors;
- Maintain financial records so as to comply with CCIOA;
- Meet with professionals who advise the board (insurance, CPA, attorney) periodically;
- Diligently pursue collection of delinquent assessments using professionals who are trained and knowledgeable in the law concerning collections; and
- Provide annual education of association operations to the members.

This list is not intended to be exclusive, as there may be many other things a board should do to carry out its fiduciary duties.

In reviewing decisions of association board of directors, Colorado courts have adopted the business judgment rule. In essence, this is a doctrine in which courts have determined that they should not meddle in the affairs of corporations (or in the case of most associations, nonprofit corporations) so long as the board is acting within the power given to it under its governing documents, the board is acting in good faith, and in the exercise of honest business judgment. This is true even if the decision made by the board turns out to be the wrong decision. Beware, though, that the business judgment rule will not protect a board or its decisions where there is an overt violation of the association's governing documents.

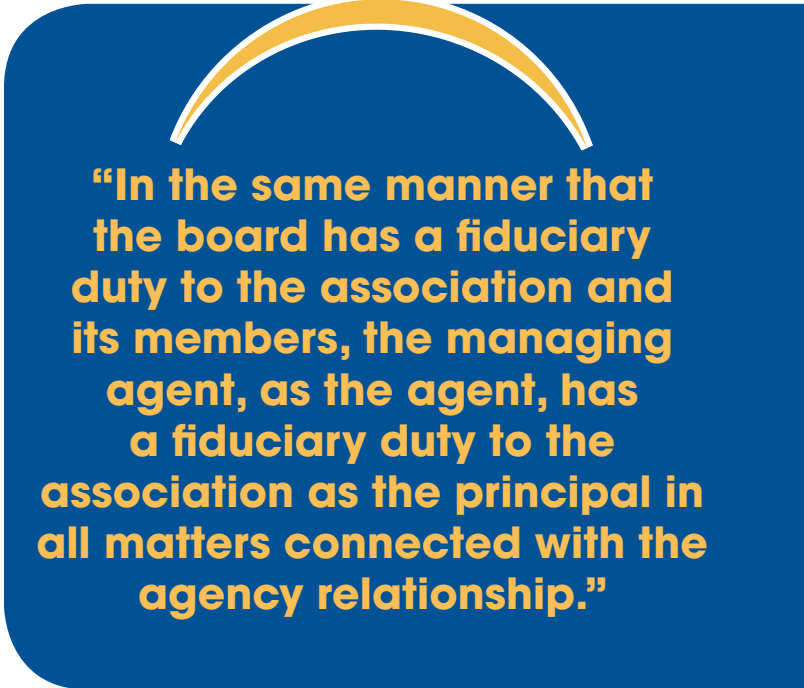
One thing to remember is that the Colorado Revised Nonprofit Corporation Act exonerates directors and officers from liability if their decisions are made based on information, opinions, reports or statements prepared or presented by legal counsel, public accountants, or other persons that the directors or officers reasonably believe are within that person's professional or expert competence. However, again discussing good faith, the Nonprofit Act provides that a director is not acting in good faith if the director has knowledge about the matter in question that makes reliance unwarranted.

Duties of the Managing Agents and Liability for Failure to Carry Out Those Duties

A managing agent's duties to the association can arise out of the common law relationship of an agent to a principal, or by virtue of the contractual relationship between the managing agent and the association, or both. In the same manner that the board has a

fiduciary duty to the association and its members, the managing agent, as the agent, has a fiduciary duty to the association as the principal in all matters connected with the agency relationship.

Many cases in Colorado discussing an agent's common law duty to a principal arose in the context of a real estate agent representing a seller of property. The courts repeatedly discuss the agent's (the manager) obligation to act with the utmost good faith and loyalty in all dealings with the principal (the association), and to use reasonable care in carrying out the terms of the agency agreement (in most cases, the management agreement), and to account to the principal for all money and property received by the agent. One



“In the same manner that the board has a fiduciary duty to the association and its members, the managing agent, as the agent, has a fiduciary duty to the association as the principal in all matters connected with the agency relationship.”

court said the agent's duty “is not only to act solely for the benefit of the principal in matters entrusted to [the broker]..., but also to take no unfair advantage of his position in the use of information or things acquired by [the broker] because of his position as agent or because of opportunities which his position affords.” It is very common in cases where the agent has been found to have breached his fiduciary duty to the principal to require the agent to forfeit to the principal all compensation which otherwise would be due to the agent, as well as other profits or compensation wrongfully obtained. The courts have said “an agent is entitled to no compensation for conduct which is a breach of his duty of loyalty.” This is true even though the conduct of the principal does not harm the principal, and even though the agent believes that the conduct is for the benefit of the principal and that he is justified in so acting.

In addition, the management contract between the association and the manager may create specific contractual obligations of the managing agent to the association. This may include any of a number of obligations, including mandatory inspections, financial and accounting obligations, insurance obligations, etc.

Obviously the above is a very general discussion about duties, and potential liabilities, of directors and managing agents. If you have specific questions or circumstances, you should consult with the association's legal counsel. ⬆

The **LIABILITY** of



Self Management



Joe Jackson,
Hammersmith
Management

When it comes to saving money on association expenditures, there are many options a board of directors can pursue. However, the first course of action they consider is sometimes the most “nuclear” option: terminating the agreement they have signed with a professional management company.

When a board of directors cancels a management agreement in favor of self-management, it nearly always does so for financial reasons. However, while the short term savings of doing away with professional management services and

the associated monthly fee may seem attractive at first, boards that go down this road often discover (and many times, too late) that this action opens them up to additional liabilities and challenges, both financial and otherwise.

Beware the financial and legal knowledge gaps

First and foremost, when a board opts for self-management, they assume full responsibility for the financial management of the association and its assets. This not only includes collecting all assessments and fees from their fellow homeowners, but it also means ensuring vendors and association bills are paid in a timely fashion, issuing paychecks to association staff like lifeguards and gate attendants (and ensuring that all associated taxes are paid timely and correctly), maintaining separate bank accounts (and accurate records) for multiple association funds, and much more. This is obviously a lot for anyone to manage, let alone a volunteer board member with a full-time job and a lack of formal financial training.

Boards that lack the proper financial background also open themselves up as targets for financial embezzlement and mismanagement when they opt to self-manage. While this can also occur in associations that are professionally-managed, most management companies operate with a division of accounting duties and financial oversight between departments, making fraud infinitely more difficult to conceal and get away with than in self-management scenarios.

Management companies are regulated by federal, state and local laws, and in Colorado (and many other states), community managers must obtain proper licensing to operate. Community managers are also retested on their legal knowledge on a yearly basis and must pass that portion of the exam every year in order to renew their license. As such, managers must stay current with the law and any updates that affect the way they manage their communities, whereas volunteer board members do not.

Who wants to volunteer? (Not it!)

Self-management may be a popular idea among homeowners in your community if it means paying a lower assessment, but you may find those same people scattering once it's time to take up the responsibilities that used to be overseen by your management company.

Let's take sending out violation letters and collecting additional fees as an example. Nobody wants to be the bearer of bad news, yet ensuring that a community's covenants, codes and restrictions are followed is one of the most important parts of protecting property values in a neighborhood. In other words: someone has to inspect properties, send out violation letters and collect fees, and as a board member, it is your duty to act in the association's best financial interest. So that responsibility will fall to you.

On the flip side of that equation, this scenario also opens up the possibility of a board member enforcing the rules in a selective or biased way (or appearing to do so), which in turn opens up the board to a possibility of a discrimination lawsuit.

Having a professional management company act as the central communicator and enforcer when it comes to violations and fees significantly reduces or eliminates any ill will between a board and their homeowners on this front.

Additionally, board members are volunteers, and ones that may at first be motivated and engaged in the community can become burnt out and lose interest in their role over time. However, professional management companies employ paid managers, accounting staff, event coordinators and much more, so because your association's business is their full-time job, they are much less likely to abandon their position without notice.

Vendors, vendors, vendors...oh my!

Does your community have a swimming pool? A gatehouse? A club house? Tennis courts? Private roads? All of those amenities must be maintained, and that means hiring the right vendors to do so.

This involves vetting the vendors thoroughly, verifying that they are properly insured, hiring them, checking their work and making sure they are paid in a timely fashion. Oftentimes board members and homeowners don't have the time to dedicate to this process, nor the knowledge and experience to know when a vendor's practices are above board and when the association is being taken advantage of.

Professional management companies, on the other hand, nearly always maintain a list of vendors that they trust and regularly work with, and they can often negotiate the best rates because they have more bargaining power than a single homeowners association. Reputable management companies solicit multiple bids and ensure that the scope of work is on target, while self-managed associations are left to their own devices.

In conclusion, while self-management may look like an attractive option when association funds are low, there is almost always a better direction to take. Partnering with a professional management company shifts many of the financial risks from the board of directors, it eliminates the problem many self-managed communities face with a lack of willing community volunteers and it minimizes community liability and vulnerability in the vendor selection process.

As in many industries, it's clear that in ours, some things are best left to the experts! ⬆



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Our Mountain Education Lunch & Learns are unique to mountain communities!
This lunch & learn program is for HOA board members, managers and business partners.

May 17, 2016 - Glenwood Springs

11:30am - 1:00pm

Glenwood Springs Community Center
100 Wulfsohn Road, Glenwood Springs CO 81601

Member Registration: Free

Non-Member Registration: \$5.00

May 18, 2016 - Vail

11:30am - 1:00pm

Vail Public Library
292 W. Meadow Drive, Vail CO 81657

Register Online
www.cai-rmc.org

May 19, 2016 - Breckenridge

11:30am - 1:00pm

Breckenridge Public Library
103 S. Harris St, Breckenridge, CO 80424

May 25, 2016 - Steamboat Springs

11:30am - 1:00pm

Steamboat Springs - The Ranch
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Common Interest Communities & Alternative Dispute Resolution (ADR)



Shane Fleener,
Partner,
Hearn & Fleener

Alternative dispute resolution, commonly referred to as “ADR”, is a general term used to describe methods for resolving disputes outside of a traditional courtroom setting. ADR has become an increasingly common way for homeowners and homeowner associations to resolve internal disputes, as well as disputes involving outside parties. Due to recent changes in Colorado law, many of these disputes now require ADR in one form or another. As a result, it is important that homeowners, homeowner associations and community managers have a basic understanding of ADR, including common forms of ADR and those situations where ADR is required or can be avoided.

Common Forms Of ADR— Mediation And Arbitration

The two most common forms of ADR are (1) mediation; and (2) arbitration. Mediation is simply a settlement discussion facilitated by an independent third-party, called a mediator. Usually lasting one or two days, mediation is non-binding with the mediator holding no legal authority over the parties or the dispute. In almost all cases, mediation is a prerequisite to a traditional courtroom trial or an arbitration hearing.

Arbitration is similar to (and takes the place of) a traditional court proceeding, with the goal of being more time and cost efficient. Arbitration can be defined as a binding proceeding whereby an independent third-party, called an arbitrator, resolves the dispute. Similar to court, an arbitration proceeding contains multiple phases, such as a discovery phase, and can last several months or even years. There is an arbitration hearing at the end, which is similar to the trial that concludes many court proceedings. The biggest difference between arbitration and a traditional court proceeding is in the role played by the arbiter. In court, the judge decides all issues of law, while the jury decides all issues of disputed fact. In arbitration, there is no jury; the arbiter makes all decisions of fact and law. This distinction can have significant implications depending on the nature of the dispute involved. The arbiter’s rulings are legally binding and rarely subject to successful appeal.

Common Interest Communities— When Is ADR Required?

For disputes involving homeowners or associations, Colorado lawmakers have expressed their support of ADR. Colorado’s Common Interest Ownership Act (or “CCIOA”) specifically encourages “associations, unit owners, managers, declarants, and all other parties” to make use of ADR in resolving disputes, and further requires that associations adopt a written policy for resolving disputes between the association and owners.¹ According to CCIOA, this endorsement of ADR stems from the “cost, complexity, and delay inherent in court proceedings”; however, the State’s lack of judicial resources is likely a major contributing factor.

Colorado law may encourage common interest communities to utilize ADR, but that is not the same as requiring ADR. So when is ADR required? The simple answer is that ADR is required when the parties contractually agree to it. As it pertains to homeowners and homeowners’ associations, ADR requirements are most frequently contained in the association’s Declaration, Bylaws and/or the purchase contracts of the individual unit owners. Such ADR provisions should specifically detail: (1) What types of claims and disputes are subject to ADR; (2) What parties are bound by the ADR requirements; (3) What forms of ADR are required; and (4) The procedures that should be followed for each type of ADR required.

Amendment Or Deletion Of ADR Provisions In Governing Documents

A common interest community is generally free to amend its governing documents provided the association complies with the amendment procedures contained in the governing documents and CCIOA. This can include the amendment, deletion or addition of ADR provisions in an association’s Declaration. Therefore, even if your association’s governing documents contain ADR provisions, two additional questions that should be considered: Would the association prefer to avoid ADR for a particular type of dispute and, if so, can the association accomplish this goal through amendment?

The answers to these questions are not always clear and will likely depend on the specific language contained in the governing documents as well as applicable laws that otherwise govern the dispute in question. Perhaps the best example of this is in the area of construction defect litigation, which has seen a myriad of ADR bills, statutes, local ordinances and court decisions in recent years.

ADR Amendment Example— Construction Defect Disputes

If you are living in a Colorado common interest community that was constructed within the last 10 years, your association's Declaration likely contains a provision requiring that any construction defect dispute involving the declarant or developer be resolved through binding arbitration. Declarants include these provisions because there is a perception that juries are more sympathetic to homeowners and homeowners associations than arbitrators. The same perception, however, resulted in many homeowner associations deleting their Declaration's ADR provisions by amendment prior to asserting a construction defect claim. This allowed many homeowner associations to avoid ADR and present their construction defect claims to a jury.

So long as an association complies with the applicable amendment procedures contained in their governing documents and CCIOA, this amendment practice generally remains permissible under Colorado law. In recent years, however, declarants began inserting additional language in the governing documents to prevent such amendments. Specifically, most Declarations now include language that prohibits the amendment or deletion of ADR provisions absent the written approval of the declarant. Because no declarant will agree to such an amendment, this additional language—if enforceable—effectively makes it impossible for an association to avoid binding arbitration of their construction defect claims. Until recently, it was unclear whether such “declarant approval” requirements were enforceable.

In May of 2015, the Colorado Court of Appeals specifically addressed this issue.² Much to the chagrin of many association lawyers and advocates (such as the author), the court held that such provisions are enforceable, even after declarant turnover. In addition to this ruling, eleven municipalities³ have enacted ordinances that similarly prohibit an association from deleting their Declaration's ADR provisions. Notably, the construction defect bills⁴ introduced in the state legislature sought to accomplish this same goal, but failed to pass. The Colorado Supreme Court has yet to decide whether it will tackle the issue. Assuming the high court declines to reverse the appellate court's ruling, arbitration rather than a jury trial will now be the norm for most construction defect disputes involving common interest communities here in Colorado.

Conclusion

The governing documents of most Colorado common interest communities contain ADR provisions in one form or another. The contents of these ADR provisions often vary widely between communities. Therefore, it is important that homeowners, associations and community managers carefully review and understand the ADR provisions in their particular governing documents. Special consideration should be given to the specific ADR language used, the parties involved, the nature of the dispute and other laws impacting the dispute in question. Understanding these factors will help determine whether a particular ADR provision is applicable, enforceable or can otherwise be amended. ⬆

Shane represents homeowners and homeowner associations across Colorado who are impacted by construction defects. Visit www.hearnfleener.com for more information.



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Issue	Topic	Article Due Date	Advertising Due Date
July	Celebrating Community	05/20/2016	06/15/2016
August	Industry Trends	06/17/2016	07/15/2016
September	Financial Management	07/22/2016	08/15/2016
October	Community Leadership	08/19/2016	09/15/2016
Nov/Dec	Year in Review	09/23/2016	10/15/2016

Minimize Liability

with a Reserve Study



Bryan Farley, RS
President,
Association
Reserves

Why would an association need a Reserve Study?

All physical assets deteriorate in time, and most of the “major” components that an association is responsible to maintain will require repair or replacement in a predictable manner. A credible, current Reserve Study makes it possible to prepare well in advance for these inevitable expenses, spreading out the reserve contributions evenly over time, rather than funding re-serves through special assessments or loans.

The Primary duty of the Board is to protect and maintain the association's common areas. Some common area replacement projects are so expensive (e.g. roofs, asphalt, siding, and windows) that they take years of preparation. A Reserve Study identifies the projects that need to be done, how much should ideally be in the Reserve Fund, and recommends a funding plan to provide for the timely repair/replacement of those projects. Failure to plan for ongoing deterioration leads to costly special assessments and potential litigation.

Is there potential liability if an association does not set aside reserve funds?

If there is no statutory requirement, the association could be subject to litigation under negligence and breach of fiduciary duty causes of action. Caring for the financial needs of the association is the Board's overall fiduciary responsibility, and an adequate or sufficient Reserve Fund is required by most Governing documents. A plan which identifies components, identifies current deterioration, and provides funds for the repair/replacement of those components is fiscally prudent.

Who should be doing Reserve Studies?

An independent, credentialed Reserve Study professional is desirable for three reasons:

- Expertise. Boards rarely have the expertise to evaluate the condition of a component, its remaining life, and the cost to replace it.
- Liability. Boards should not take on the potential liability. It is cheap insurance to have an independent, credentialed Reserve Specialist prepare the study.
- Politics. Having a specialist prepare the study also saves the board a lot of grief. Homeowners who dislike the Board will challenge the study and threaten the board. A specialist deflects the rhetoric.

Does having a Community Manager prepare the Reserve Study complicate anything?

Managers serve as agents of the board and take their direction from the board. Managers:

- Lack the independence from board direction necessary to make the candid evaluation and harsh recommendations that may be necessary.
- Cause a conflict of interest, as the manager feels pressure to soften the results of the Reserve Study, especially if it reflects poorly on the management company's financial guidance and controls.
- Management contracts typically require “hold harmless” and “indemnification” clauses by the Association. As a result, the association (not the management company) would be forced to defend the management company for any litigation created by a flawed Reserve Study.

Whose Reserve Study is it?

If the Reserve Study is the work product of an independent expert, that person's, or firm's, findings should be in the document. In that case the Board has effectively asked the expert for their opinion, and it is wrong for the Board to believe they control the outcome. If the Reserve Study is edited by the Board, the association takes on potential liability.

What if the board feels the association can't afford adequate reserve contributions?

Most associations find it takes reserve contributions of 15-40% of their total budget to maintain their common areas. Maintaining the common areas is a duty of the board, not a suggestion. The board is required to set a budget appropriate to meet the needs of the association. Members, in buying a home in the community, have agreed to pay their fair share of the income needed by the association. If the board does not fund the needs of the association, they will experience decay or special assessments, property values will decline, loans will be difficult to obtain, and the risk of litigation will increase.

Who can see the Reserve Study?

Homeowners have a right to see the Reserve Study or at least a summary of the Study as part of the annual financial package they receive. In a Real Estate transaction, the association is not a party to the transaction between buyer and seller. The association has no obligation to give reserve studies to realtors or lenders until the property is in escrow and a document package has been requested. If the seller wants to distribute the study, he/she has every right to do so.

In summary, a Reserve Study is tool that will help a community avoid potential liability by giving the board valuable information on the condition and deterioration of their common area assets. A board would be wise to make sure that if they have a Reserve Study, it is updated; if the community does not have a Reserve Study, the board should reach out to a qualified Reserve Study specialist sooner rather than later. ⬆

CAI Social Media Roundup

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Members Building Membership

The CAI Recruiter Club recognizes and rewards members who recruit colleagues to join CAI. Whether you're an association board member, community manager, association management company or service provider, you're encouraged to help build membership by sharing the message about CAI.

Every new member brings added credibility to CAI and the community association industry, making CAI a more effective advocate for associations, board members and industry professionals. You're also helping your chapter and expanding your own professional network.

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www.caionline.org/recruiter



Wolf

in Sheep's Clothing

Due Diligence for New Client Interviews



Matt Egan,
President,
A&M Properties

Anyone who has been in community management for any period of time, and sold management services to HOA's has surely encountered the inevitable situation when a Board of Directors or management search committee talks about how everything in the community is "just fine". There are no major issues or problems. "Really, we're pretty easy", I have heard many board members say.

If only there were a crystal ball that would let management companies see everything that goes on with a HOA before taking them on as a client. If only it were possible to have a successful,

profitable management company by only working with HOA's that have wonderful board members, happy homeowners, sound financials and no maintenance problems. Unfortunately, it seems that every management company takes their turn with industry problem children. To avoid ending up like Joe, it is important to perform as much due diligence on a prospective client as they might on the management company – maybe more.

While management companies core duties and services may center around governance, maintenance and financial support for the communities they serve, a lot of what community managers do on a daily basis is handle people, property, money and problems. In order to try and fully vet the prospective client, be sure to explore each one of these areas.

People—Who will you be working with?

For as many HOA's exist, there may be the same number of processes they go through to hire new management. Some HOA's establish a committee to research, interview and evaluate potential new management companies. This is all fine and good but those are not the people with whom your managers will be working on a monthly, weekly or daily basis. At some point in the process, the management company needs to meet the board of directors to research, interview and evaluate them!

What is their professional background? How long have they been on the board? Have they ever had any HOA training or education? Why are they looking for new management? What is their daily or weekly involvement in the governance and operations of the HOA?

One of the primary duties of the HOA board is to make decisions. How they go about making those decisions and how much information they need to make decisions can dramatically impact the amount of time it takes to manage that community. Probing questions and inquiries into anything from setting the budget to approving minutes to evaluating vendor proposals for summer landscaping can all provide good information on what it will take to herd this specific group of cats.

Property—What is the current condition of the property?

The key is to get the board members talking. A simple meeting at a community with one or more members of the board to walk around and tour the common areas can yield a wealth of information about the board members you are with, the homeowners and the

property itself. It also gives management an opportunity to inspect and assess the property condition directly. This "walk and talk" can prompt topics of discussion or anecdotes or other details about the property that might not have come up in one of the board members' homes, the clubhouse or the management company office. They may recall a drainage issue that is problematic every spring as you walk by one of the buildings. They may note the on-again off-again roof leak that has been going on for the last year as you walk by the clubhouse. They may mention the irrigation problems that haven't been resolved as you walk the grounds and inspect the landscaping or the repeat noise violations from a specific unit. All of these items begin to paint a picture of the effort it will take to manage this community and what lurks behind the scenes.

Money—How are the current financials?

Some HOA boards may be reluctant to provide a set of financials or the budget. They sometimes fear that they will be letting the cat out of the bag on how much they currently pay for management services. After all, they want to get new management services cheap! FYI—this is a red flag. If the board is not forthcoming with their financial information, there are probably other items and information that they are not sharing as well.

Problems—What are the current issues on their plate?

This is essentially the "miscellaneous" category that can blow up a management contract. It is also the most difficult to solicit from the Board of Directors or management search committee. More often than not, many of the miscellaneous problems for the HOA are not even addressed or covered in the management agreement. Yet, they still end up in our laps. This is a completely separate layer of probing and questioning when meeting with a Board of Directors or management search committee.

Real life examples:

- A condominium association wanted a community manager to investigate a modification to a City of Denver intersection.
- A Board of Directors requested that the community manager come to the pool to monitor and verify people accessing the pool from the two different communities that had pool access.
- A board member requested that a manager pick up cat food for her. As in pick up cat food for her from the store on the way to the building. Etc.....

A simple, "What are your expectations from your community manager?" or, "What services is your current manager not providing?" can often open up this type of dialogue.

Of course, there are HOA's out there that are not problematic to a severe degree. There are also Boards of Directors and management search committees that recognize that they need help and are willing to be forthright with their problems. If they do not provide prospective management companies with information on their problems and their goals, how is the management company going to be prepared to help them? Better yet, how is the Board of Directors going to hire the right management company to help the HOA resolve problems and achieve their goals? Better for the HOA to present the good, the bad, and the ugly if a HOA is going to sign up with the right management company. ⬆



MEMBER DISCUSSION BOARD ANY TOPIC, ANY TIME

A members-only benefit, the CAI Member Discussion Board provides a medium members can use to get advice, offer advice, share information and discuss issues facing communities.

Visit this resource at www.caionline.org/messageboard for ideas, guidance and perspectives from fellow members. Topics are limited only by your need for information, perspective and feedback. Discussions can range from community manager evaluation and wastewater management to assessment collection policies and board member conduct.



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MAY

17 Tue	Mountain Education Lunch & Learn Glenwood Springs
18 Wed	Mountain Education Lunch & Learn Vail
19 Thu	Mountain Education Lunch & Learn Breckenridge
19 Thu	Manager's Lunch Westminster
24 Tue	Lunch & Learn Denver

25
Wed **Mountain Education Lunch & Learn**
Steamboat Springs

26
Thu **Lunch & Learn**
Fort Collins

JUNE

6
Mon **HOA Roundtable**
Fort Collins

9-10
Thu-Fri **M202—Association Communications**
Greenwood Village

14
Tue **Association Leadership Series**
Greenwood Village

For the latest information on all our programs, visit www.cai-rmc.org!

Don't forget to register for events—it helps us place food orders and make sure that we have adequate space.