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COMMON INTERESTS

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President's Letter

DENISE HAAS,
President
CAI-RMC

Well, we are in full swing for construction, pools, parking and, you know, the famous pool season! This is the time of year that a lot of contracts are passing over a manager's desk as well as in front of the Board of Directors. In this issue of *Common Interests*, you will receive many tips and tricks in regards to legal information for the Association, working with Business Partners as well as how to handle contracts and what to look for. We hope you enjoy!

We just finished attending National Conference and welcome **Greg Smith** as the **President of the Board of Trustees for CAI.** He presented an excellent talk about the CAI Moment. Please see the graph to the right to see if it resonates with you. I am currently working with National to see if we can download his speech to have available to those that were not able to attend. I believe in working with and through CAI, you have an opportunity to connect in all of the areas in the graphic and have it create a CAI Moment for you. I know it does for me! We hope you will join us for a quick break on **June 23rd** as it is time for our **Annual CAI Golf Tournament.** I look forward to seeing you all there!

Executive Director's Message

BRIDGET NICHOLS,
Executive Director
CAI-RMC

Did you know that June has the Summer Solstice, the day with the longest daylight of the year? This year Summer Solstice falls on Tuesday, June 20. I tend to make the most out of the daylight by enjoying a book in a hammock. Do me a favor, don't try and catch up on chores or do a bit more work at the office on June 20th. Do something for yourself, outside with the company of natural light, and enjoy the season.

I love the following passage by Henry David Thoreau regarding the month of June: "This is June, the month of grass and leaves . . . already the aspens are trembling again, and a new summer is offered me. I feel a little fluttered in my thoughts, as if I might be too late. Each season is but an infinitesimal point. It no sooner comes than it is gone. It has no duration. It simply gives a tone and hue to my thought. Each annual phenomena is reminiscence and prompting. Our thoughts and sentiments answer to the revolution of the seasons, as two cog-wheels fit into each other. We are conversant with only one point of contact at a time, from which we receive a prompting and impulse and instantly pass to a new season or point of contact. A year is made up of a certain series and number of sensations and thoughts which have their language in nature. Now I am ice, now I am sorrel. Each experience reduces itself to a mood of the mind".—*Henry David Thoreau, in his Journal.*

COMMON INTERESTS

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CAI Adopts an Expanded Public Policy Regarding Construction Defect Claims

Jeff Kerrane,
Benson, Kerrane, Storz & Nelson

The past few years have seen an unprecedented surge in the introduction of state legislation aimed at curbing construction defect lawsuits. Several states have passed major reforms with the goal of increasing hurdles for community associations to file lawsuits, providing builders with a right to repair, limiting associations' rights to amend their governing documents, shortening the deadlines to bring claims, and taking away a right to a jury trial.

The Community Associations Institute responded in 2016 by amending and broadening its public policy toward protecting associations' rights to pursue construction defect claims. CAI has published public policies on a broad range of topics including board member education, the mortgage interest deduction, and satellite dishes. CAI's public policies are intended to guide local chapters and legislative action committees in their advocacy efforts.

Prior to 2016, CAI had a limited public policy, titled "Protection of Association Claims in Right to Cure Legislation." Last April, CAI's Government & Public Affairs Committee redrafted and broadened this policy, renaming it, "Protection of Association Claims in Construction Defect Legislation."

CAI's new policy on construction defect legislation includes the following tenets:

- **The Opportunity to Cure.** While builders should be given an opportunity to present a reasonable plan to repair defective construction, an association should have the opportunity to accept or reject the plan. After all, the property belongs to the association and the owners, and it is their right to make the final decision as to what repairs are appropriate and who may perform the repairs.
- **The Board of Directors Are the Decision Makers.** Like any other non-profit corporation, the board of directors should have the power to make informed business decisions for the association, and the declarant should not be able to unreasonably restrain the board's power to initiate legal proceedings by requiring a homeowner vote in the association's governing documents. Furthermore, the declarant should not be permitted to retain any decision-making power over the association after the period of declarant control ends.
- **Protection of Attorney-Client Relationship.** When an association hires an attorney, the attorney's communications with the board, homeowners, and community manager should be confidential, and should not be at risk of disclosure in litigation discovery proceedings. Further, legislation should not force an association to make specific legal disclosures in litigation if the association and its attorneys believe the disclosures to be untrue.
- **Alternative Dispute Resolution.** CAI encourages alternative dispute resolution (ADR), such as arbitration, as an acceptable alternative to construction defect litigation when consent to ADR is truly voluntary and occurs after the dispute arises. This means that a declarant should not be permitted to impose ADR provisions on homeowners and associations by inserting one-sided provisions in purchase agreements or governing documents.
- **Right to Be Made Whole.** CAI encourages legislation that provides the prevailing party with recovery of litigation expenses, attorneys' fees, and pre-judgment interest.
- **Statutes of Limitations and Repose.** CAI recognizes that some construction defects are hidden, and may take years to show themselves. CAI's new policy opposes any legislation that gives an association less than six years after substantial completion to bring a claim, or less than two years after the association discovers the defect.
- **Self-Governance.** Declarants should not be permitted to insert provisions in governing documents that make it more difficult, time consuming, or expensive for an association to bring a construction defect claim.
- **State Concern.** CAI supports consistent state laws and opposes the ability of cities and counties to pass a patchwork of local ordinances that make the laws for bringing a construction defect claim vary across different municipal jurisdictions within one state.

Jeff Kerrane is a partner at Benson, Kerrane, Storz & Nelson, which represents homeowners and community associations faced with construction defects throughout Colorado, Minnesota, Wisconsin, and Texas. Jeff was a member of CAI Government & Public Affairs Committee from 2015 to 2016.

THE FUTURE IS NOW

The Power of Conflict Resolution Training for MANAGERS

Monica Lichtenberger, Phoenix Strategies, Inc

Murray Bain, PCAM, CCAM, Summit HOA Services, Inc.

Wes Wollenweber, Feldmann Nagel, LLC

Resolution of community disputes is no longer a task left for lawyers and trained mediators. Times are changing. Managers play a major role in helping resolve disputes and, as discussed below, that role will increase in the future. This spring, mediator, Monica Lichtenberger of Phoenix Strategies, Murray Baine of Summit HOA Services, and Wes Wollenweber of Feldmann Nagel, join forces to present their 8-hour continuing education program entitled, "Conflict Management & Dispute Training for HOA and Real Estate Professionals." This program will be certified for eight hours of continuing education credit for both community managers, as well and real estate professionals. Alternative Dispute Resolution (ADR), such as mediation, is badly needed for community disputes. Future legislation may make mediation and other forms of ADR mandatory in housing disputes. As such, community managers, property managers, and other real estate professionals can benefit greatly from conflict resolution training. We all know that HOA and real estate professionals deal with all types of conflict. That conflict is on the rise as our societal conflict increases. Conflict resolution skills not only help resolve the day-to-day challenges of community conflict but also, will be in greater demand as the legislative landscape develops. Managers equipped with these crucial skills will be seen as a major resource once it is mandatory to mediate community conflicts.

Conflict resolution has been covered in prior editions but community manager feedback suggests that more and more managers are interested in learning new and additional skills pertaining to being part of the resolution process itself. This is encouraging because community disputes face many hurdles if they are not resolved prior to litigation. Community disputes, whether involving neighbor-to-neighbor conflicts, disagreements between neighboring homeowner associations (e.g. easement disputes), or homeowner association-member battles, can be very expensive both in terms of money and time. As so many of us know, they are often emotionally charged legal disputes, which can lead to significant legal expense. They are time consuming and take board members and managers away from the main task of sound governance. Further, the outcome of court cases does not always justify that expense. Aside from legal disputes, community managers can benefit greatly from conflict resolution techniques as a means to problem solve on a day-to-day base basis and end disputes before they get out of hand. These skills help solve issues between board members, boards and community members, as well as broader issues.

In Monica, Murray, and Wes's training, managers will become familiar with the PSI Collaborative and the Facilitative Interest-Based (CFI) model in order to learn best practice conflict management strategies and techniques. Collaborative strategies focus on the tenet that people in conflict usually have some type of prior relationship. Given the nature of community disputes, these strategies are crucial for managers because they help use existing relationships to resolve conflict. The level of volatility or peacefulness reflected in this existing relationship is not necessarily a result of the actual conflict but rather how people communicate with and treat one another during a disagreement. People are less likely to launch a formal complaint or initiate a lawsuit against someone they feel has harmed them if they are treated with respect. Collaborative conflict managers use strategies and techniques that help connect people and foster that necessary respect. Respect leads to trust, and this heightened care and trust enables parties in a community to collaborate as partners, analyzing issues and designing optimal and mutually satisfying solutions.

Facilitative conflict managers use approaches that empower, assisting people to make their own decisions. Empowerment is based the belief that disputants are capable of making their own decisions. People in conflict know the most about their situations, and what will ultimately work. In some disputes, people do not need someone telling them or pressuring them to accept ideas from outside their situation. However, others, such as managers dealing with a board dispute, can be helpful by asking questions and/or challenging certain ideas involved in the dispute. Empowerment happens when people involved directly in the conflict reach a full understanding of the situation and believes that they have the ability to make their own decisions. This approach is equally valuable to community disputes. A manager who can help facilitate individuals in conflict talking through their own issues is a high-level manager.

The interest-based method goes beyond the surface and the positions people take in a dispute (e.g. we want to enforce this policy that we have not enforced in some time) and delve into the deeper interest that area really driving the dispute (e.g. we need the policy now because of one individual that we take issue with). This method focuses on the true needs of the parties. Often, in community disputes, this method finds the true common ground or common interest between the disputants and focuses on solutions valuable to both sides.

No matter the method, conflict resolution training places another valuable arrow in the manager and real estate professional's quiver of people skills. In addition, as mediation and other forms of ADR become potential mandatory, managers with this training and these skills will offer another level of service to this industry that will be invaluable.

Monica Lichtenberger, Phoenix Strategies, Inc. (PSI) President, has 20 years of experience as a mediator, coach, trainer, facilitator, faith conciliator and conflict management system designer. As a conflict management specialist, she has extensive mediation experience and has delivered Home Owner Association, workplace, faith conciliation, elder care, Restorative Justice, domestic, and business/consumer conflict management training.

Murray Bain, PCAM, CCAM, is the President of Summit HOA Services Inc.

Wes Wollenweber is a senior attorney at Feldmann Nagel LLC. He has represented HOAs for 17 years.

Doggone It!

Associations' Rights and Obligations Related to Service

K. Christian Webert

Some homeowners and condominium associations have restrictions on animals within their communities. Generally, these restrictions prohibit certain animals, limit the number and size of certain animals, and prohibit certain animals from certain areas in the community. Sometimes, a resident demands that the association make an exception to its rules because the resident has a service animal or an assistance animal. The association board and manager are then left to sort through the alphabet soup of laws and government agencies, determine whether the resident's demand is valid, and inform the resident of the association's position. Good times. This article seeks to provide some guidance on how to respond to these demands.

Associations' Rights and Obligations Related to Service Animals

A "service animal" is a dog or miniature horse individually trained to provide assistance to an individual with a disability, under the Americans with Disabilities Act ("ADA"). Most associations are not subject to the ADA because they do not have places of public accommodation. As such, most associations are not required to allow service animals. However, associations that invite the public to use the associations' amenities might be subject to the ADA. If an association is subject to the ADA, the association must allow the service animal access.

To determine whether an animal is a service animal, the association may ask two question: (1) Is this a service animal that is required because of a disability? (2) What work or tasks has the

and Assistance Animals

animal been trained to perform? Please note, if it is apparent that the animal is a service animal, the association may not ask these questions. For example, a dog guiding a person who is blind may not be the subject of inquiry. All that said, the association may deny access to the animal if (1) the animal is out of control; (2) the animal is not housebroken; or (3) the animal poses a direct threat to the health or safety of others. Additionally, effective 2017, Colorado has made it a crime to intentionally misrepresent that an animal is a service animal.

Associations' Rights and Obligations Related to Assistance Animals

An "assistance animal" is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability, under the federal Fair Housing Act ("FHAct"). Generally, an association must allow an assistance animal in the association's community, even if the association has a rule prohibiting the assistance animal. Please note, the FHAct protects all residents, including owners, tenants, and applicants/prospective residents. When a resident asks the association to allow an assistance animal despite the association's restrictions on animals, the resident is requesting a reasonable accommodation.

To determine whether an animal is an assistance animal, the association must follow the reasonable accommodation process required by the FHAct. There are a few guiding principles to consider. First, the Association should actively engage in the reasonable accommodation request process. Second, if the requested accommodation is not granted, the Association should propose a less restrictive alternative. Third, the association should document the reasonable accommodation request process thoroughly.

"Most associations are not required to allow service animals. However, associations that invite the public to use the associations' amenities might be subject to the ADA. If an association is subject to the ADA, the association must allow the service animal access."

Beyond these guiding principles, the association must take the following steps. First, the association must determine whether the person making the request is disabled, i.e. a physical or mental impairment that substantially limits one or more major life activities. Second, the association must determine whether the person making the request has a disability-related need for an assistance animal. If the person's disability is not apparent, the association may request and obtain additional information to substantiate the person's disability and the disability-related need for the assistance animal. If the association determines that requestor is either not disabled or does not have a disability-related need for an assistance animal, the association may deny the request. However, if the association determines the requestor is disabled and has a disability-related need for an assistance animal, then the association must allow the assistance animal.

However, the association need not allow an assistance animal if any of the following applies. First, allowing the assistance animal would impose an undue financial and administrative burden. Second, it would fundamentally alter the nature of the association's services. Third, the specific assistance animal poses a direct threat to the health or safety of others. Fourth, the specific assistance animal would cause substantial physical damage to the property of others. Additionally, effective 2017, Colorado has made it a crime to intentionally misrepresent that a resident is entitled to an assistance animal.

Christian Webert is an associate at Moeller Graf, P.C., where he has spent the past five years specializing in all areas of common interest community law. You may find out more about Moeller Graf, P.C. at www.moellergraf.com.

ROGUE HOA MEMBERS

Justin Bayer,
Caretaker
Landscape

The idea of an HOA board member going rogue and compromising the integrity or the future of a community is not uncommon. Going "rogue" can refer to various actions, including but not limited to; making impactful decisions without consulting others on the board, acting in an uncivil manner with other board members, using volatile language or behavior toward other board members, or utilizing their position as a board member or board officer to make personally beneficial decisions. Oftentimes these power struggles or bullying through personal agendas can lead to attorney involvement and litigation, avenues that can be fiscally damaging for an HOA and its respective membership.

While there are certainly times when a lawsuit is the only action left to take against a particularly difficult or tyrannical board member, avoiding this result completely is typically a more desirable route. That being said, taking the proper steps in the early stages of this situation can be confusing and stressful.

What rights do board members have when facing a rogue board president? What if that president is newly elected? How can the board deal with a board member who is hiring contractors behind their back? This article will aim to concisely address questions like these and bring to light a board's rights, as well as proper steps to follow when faced with a difficult situation involving a rogue board member.

Step One: A Conversation

While a seemingly innocuous call to action, a simple conversation can go a long way. This type of correspondence can be behind closed doors if preferred, which can be especially effective for enlightening a board member who is beginning to "go rogue." If board members are not comfortable with an off-the-record conversation, utilizing the structure of the board meeting forum can be especially helpful. By stating issues or questioning decision making within the boundaries of an official meeting, the concerned board members can ensure that their points will be officially logged in the meeting's minutes.

Step Two: Resorting to Action

Oftentimes it is power over fellow homeowners that can get to a rogue board member's head. They threaten the sanctity of their position by acting out on their own accord, a clear and direct violation of their commitment to the association. This sort of behavior can derive from a position of power on the board, one they were most likely elected to prior to this behavior. Rather than waiting for their term to expire (an option, to be sure, though a lengthier process in most cases), a board has the ability to remove an officer. This process typically only requires a majority vote, though many board members are unaware of this course of action.

If removal from a position of power is not enough (or the offending member refuses to step down on their own), there is the option of removing this person from the board entirely, although this can prove to be a bit more challenging. In most cases, the process of complete removal from an HOA board takes the vote of every member on the board. It should be noted that this is the bare minimum it would require to remove a member completely. As with any process that has serious legal and fiscal ramifications, it is best to become educated in the common interest-related state and federal laws that apply to your community. For Colorado, these laws can be found on the Colorado.gov website, on the Department of Regulatory Agencies (DORA) page.

Step Three: Covering Your Bases

If the rogue board member has already acted on their own accord and for their own interest or gain, it would be wise to notify all vendors and other community business partners that the board as a whole makes the purchasing decisions for the community. If action regarding third party businesses are not handled in a timely manner, the board could be forced to suffer the monetary consequences of the rogue member's decisions.

In a 2016 article for HOALeader.com, Bob Kmiecik, a partner at Kaman & Cusimano LLC, advises that "You should contact contractors and say the president doesn't have the authority to sign contracts himself and therefore those vendors don't have a reasonable basis to rely on that authority in contracting with the association."

A final step to ensure that the board is being properly represented legally is to involve the community's legal representation in all emailed correspondence regarding the behavior of a rogue board member. This action can be of great importance if the decision-making of a rogue board officer comes back to adversely impact the board or the community.

Step Four: Mediation

There are instances where mediation is both beneficial and unavoidable. If the board determines that this rogue board member has acted in a manner outside his or her scope, the association may bring forth a lawsuit, and the court will likely mandate that the parties participate in mediation. The parties would participate in mediation either with or without their own respective legal counsel.

Mediation would involve both parties working toward an agreement while a neutral third party oversees and facilitates the process. All conversation and possible settlement terms in mediation are confidential and cannot be presented as evidence in a later court proceeding. This helps to ensure open negotiations. If the parties are able to come to terms and settle the dispute they would then sign a settlement agreement.

The process of mediation is non-binding, meaning if both parties are unable to come to an agreement during the process, the neutral third party cannot force the parties to reach a settlement.

Mediation varies from arbitration in that the latter is usually binding. During arbitration, instead of a neutral third party, there is an arbitrator or a panel of arbitrators who hear the arguments from both parties then make a decision as to who is right and who is wrong. The process is like a mini-trial and the arbitrator's decision is enforceable by law.

While there is no perfect way to handle these extremely difficult situations, being well prepared and knowledgeable about the rights and authority of your board as a whole is invaluable. Always consult the proper channels of legal representation before proceeding with any action that may result in fiscally damaging or detrimental conduct to the community.

D&O Insurance Shortfalls and Lawsuit Trends

Candyce Cavanagh,
Orten Cavanagh & Holmes, LLC

If you are a volunteer member of your association's board of directors, it is in your best interests to ensure your association maintains a comprehensive directors and officers ("D&O") liability policy. A claim against board members may or may not be justified, but defense may be an expensive undertaking and in some instances awards for damages may be substantial.

Colorado law address indemnification of directors and officers. Association bylaws sometimes also address indemnifying committee members or other volunteers. However, without D&O liability insurance to fund the indemnification obligation, an association is faced with the prospect of funding defense as an association common expense of the association.

What are the most common types of D&O claims? This past month at the CAI Luncheon, Adam Collins with Ian H. Graham Insurance identified the following claims as the most common: breach of fiduciary duty; failure to adhere to bylaws; challenges to assessments; failure to properly notice elections or count votes; improper removal of board members; challenges to architectural review decisions; Fair Housing Act discrimination claims; challenges regarding easements and variances; board's failure to maintain common areas; defamation by the board of a member; and failure to properly disburse funds. This list represents the most common claims, but there are many other types of claims an association may face.

All directors and officers policies are not created equal. In general, there are two types of policies: package policies and stand-alone policies. Package policies often limit coverage to monetary claims and may only cover lawsuits, but not administrative proceedings (i.e., fair housing claims before state civil rights division) or alternative dispute resolution proceedings (i.e., mediation or arbitration). Additionally, insured persons may be only directors, officers and the association. The policy may not cover committee members or the association's manager.

Stand-alone policies typically cover monetary and non-monetary claims and also cover administrative proceedings and alternative dispute resolution claims as well as lawsuits. Further, insured entities typically include not only the directors, officers and association, but also employees, committee members, volunteers and community association managers.

Even stand-alone policies are not created equal. Types of coverage the board may consider when reviewing D&O policies include the following: defense for breach of contract; defense outside policy limits (i.e., attorneys' fees included within or above the coverage limit); third party employment discrimination and harassment; employment practice liability; cyber liability, lifetime reporting period; full prior acts coverage; defense for libel and slander; defense for failure to maintain insurance; employees recognized as a claimant (i.e., standard insured vs. insured exclusion would not apply); and coverage extended to a spouse or partner. Basic definitions such as the definition of a claim may not be the same on every policy and can have a substantial impact on coverage. If you do not know why these types of coverage are beneficial for your association or why policy definitions are important, then do not hesitate to ask questions.

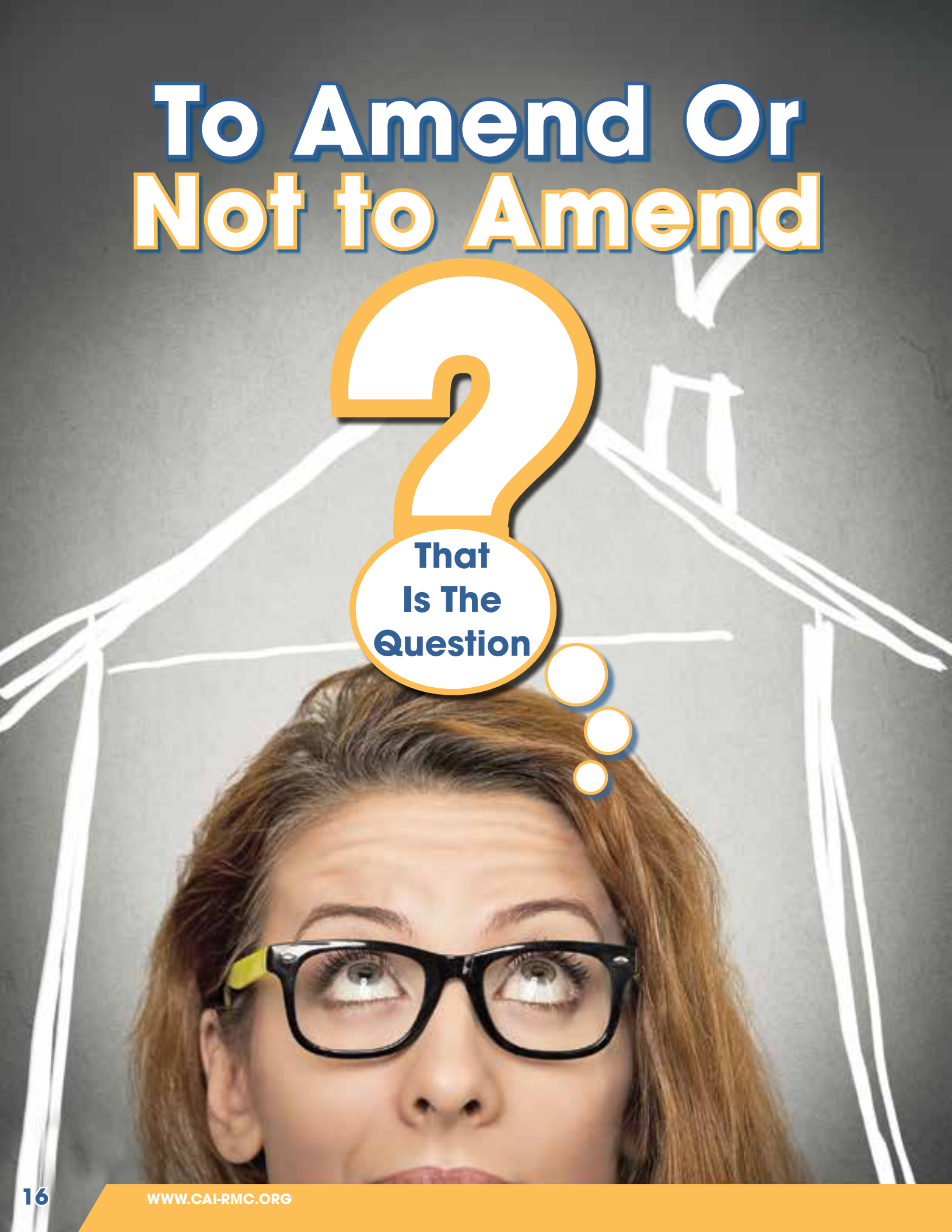
How do these differences in coverage play out in the real world? Here is a real world example. A single mother moves into a community of primarily age 55+ residents, but the community is not a 55+ community under the terms of federal law. The board adopts a rule prohibiting play structures and after receiving a complaint, the board modifies the rule to prohibit play structures that can be seen above the fence line. The single mother files a complaint based on discrimination against families with children. After the complaint is filed, the rule is rescinded, but the discrimination action proceeds. The D&O insurer provides a defense, but this association's D&O policy only covers defense costs and not damages in the event of a finding of discrimination. Ultimately, two fines of $15,000 each for each of the two rules are imposed and damages of $28,000 are awarded to the claimant. Although the association had its legal defense costs covered, it was uninsured for a total of $58,000. If this association had a policy that covered the damages award, the policy premium difference would have been well worth the investment.

In addition to administrative claims, there are also lawsuits that could be covered by D&O insurance. For example, the Colorado Court of Appeals ruled in 2015 on a case involving validity of a rule limiting short term leasing (Houston v. Wilson Mesa). The owner filed an action to contest two $500 fines for violating a short term leasing rule. The court ruled that short-term leasing is not a commercial use and the minimum lease term had to be in the declaration because the lack of any minimum term in the declaration means that there is no restriction and a rule cannot amend the declaration. We do not know if D&O insurance was involved in this case, but ideally the association had D&O insurance that covered non-monetary claims. If not, the association would have to pay its legal fees for the trial court and appellate court actions out of association funds.

The costs for claims that may be covered by D&O policies can be substantial, whether defense costs or awards for damages. It is important for boards to ask questions of their insurance professionals and not automatically select the least expensive policy without comparing available coverage offered on policies in the marketplace. Boards may also consult with their legal counsel if they have D&O policy questions.

Candyce Cavanagh is a founding member of Orten Cavanagh & Holmes, LLC, a law firm that advocates a preventive approach in providing legal representation to community associations. Candyce is long time member of CAI and also a fellow in CAI's College of Community Association Lawyers.

To Amend Or Not to Amend



Lee Freedman,
Feldmann Nagel, LLC

Whether 'tis nobler in the minds of the community to live with governing documents that were the creation of the developer or to suffer the slings and arrows of the expense of amending the governing documents to fit the current makeup of the community. That decision many times is the ultimate question a Board of Directors for and owners in a common interest community must make.

Owners, board members, and managers should understand that most community associations are created by developers who do not have any intention to live in the community for many years. However, the developers create communities based on their own interest, and not the future interests of the owners that eventually will buy into the community. The interests of the owners may differ substantially from those of the developer either immediately or over time. As such, the needs of the community also change over time from the needs of the original development.

To effectuate their interests, the developers create governing documents that suit their needs, and likely do not suit the future needs of the community.

Many common interest communities deal with governing documents that are either so incomplete, so outdated, or so out of touch with the current makeup of the community, that the communities are having difficulty utilizing them to suit the needs of the community and the community association. However, the expense to modify the governing documents to fit such current needs, and the apathy in a community can make it difficult to obtain the necessary votes to approve such amendments. The governing documents consist generally of the Articles of Incorporation, the Declaration, and the Rules and Regulations (which also include the governance policies and any design guidelines).

To have such governing documents suit the needs of the community, a community would need to change the documents by amendments. Whether to amend or not to amend is not a simple question . Amending just the Declaration can sometimes cost an Association $10,000 or more, depending on whether the community proceeds with wholesale changes to the Declaration or amends just a few of the covenants in the Declaration, how contentious the amendments are in the community, how difficult it may be to obtain approval of the amendments, and how much the community association's counsel charges.

Before the board of directors for a community association adopts amendments (if they may do so without member approval) or proposes such amendments to the membership, the board should first analyze the sufficiency of the governing documents, the needs of the community, and the difficulty, time and effort necessary, and cost to obtain such approval. Basically, the board needs to determine if such amendments are necessary and whether the time and expense to be incurred is in the best interests of the association and the community.

The Declaration is the covenants governing the community, including any lots, units, common area or common elements in the community. The Declaration is typically the most difficult document to amend. That is why the Declaration should generally contain those covenants that the community wants to clearly maintain in the community for years to come, as they would be difficult to amend in the future. Any needs or requirements that could change over time or from board to board (such as parking restrictions, painting restrictions, etc.) should be in the other governing documents that may be easier to change by board approval or approval of a lesser number of owners.

Generally, except in a few limited situations, the Declaration may be amended by the approval or consent of between a minimum of a majority and a maximum of 67% of the total voting power of the owners in the community, depending on the specific amendment language in the Declaration.

However, the consent of first mortgagees (the holders of first mortgages on the lots or units in the community) may be required for approval of Declaration amendments. Although the Colorado Common Interest Ownership Act (CCIOA) provides a process to make it easier for a community association to obtain such first mortgagee consent without having to actually obtain written consent, it still may be difficult to get the requisite approval where the consent of all or most of the first mortgagees is required or where the amendments negatively impact the rights of the first mortgagees.

The Articles, the governing document that forms the community association, may be amended by approval of the Board or the members, depending on its amendment provision. If by the members, it is important to understand if such approval is by a vote of the entire membership or only those present at a member meeting where quorum is present. Some Articles can be substantially difficult to amend because they require all or nearly all of the owners to approve amendments.

A community association may want to modify the Articles to, among other things, adopt CCIOA, amend the purposes of the association, provide for a range of members of the board of directors, or change the termination provisions (as to the latter, many older Articles provide that they terminate after a specific period of time if not extended rather than having perpetual life).

As with the Articles, the Bylaws, which outline how the community association is to be governed, may generally be amended by approval of the Board or the members, depending on the amendment provision in the Bylaws. However, if quorum at a member or board meeting is to be changed by amendment, such amendment requires the approval of the members. If the Bylaws are silent as to how member approval is to be obtained, then such approval is to be by the vote of the members at a member meeting called for the purpose of obtaining approval of the amendments at which quorum is present.

A community association may want to amend the Bylaws by, among other things, allowing for proxies, changing quorum requirements, changing voting requirements, changing duties or rights of the Board or officers, changing the board election or removal process, or outlining hearing requirements.

The Rules and Regulations, governance policies, and design guidelines, on the other hand, may be adopted and amended by the board of directors unless there is some provision in the other governing documents stating otherwise.

Full scale amendments (typically referred to as "Amended and Restated" documents) are not always required. Community association can choose to address specific, more immediate needs by amending only specific provisions of a governing document rather than amending the entire document. This could save the association expenses, although it does not guaranty an easier approval process nor does it mean that ultimately full scale amendments are not in the best interests of the community.

The board of directors should also consider the appointment of a committee of interested members in the community to participate in the amendment process, even though the Board has the final decision as to whether to propose the amendments to the membership. A committee can help address the true needs of the community, consider questions and comments from other owners in the community, determine appropriate amendments to address the community's needs, and communicate with the board. Having members with different opinions on amendment may also help sell proposed amendments to the membership as a joint product addressing everybody's concerns.

To this latter issue, marketing of the proposed amendments is an important step to obtain approval, especially for contentious amendments or where apathy permeates the community. Such marketing techniques may include, among other things, door-to-door discussions, newsletter articles, and member or board meetings at which the proposed amendments are discussed.

Even with such efforts, it could take considerable time and expense to obtain the necessary approvals. However, if done appropriately and successfully, the final amendments should better suit the current needs of the community, make the management and operation of the community, and aid in the compliance with the current law affecting the community.

Lee Freedman is a senior attorney at Feldmann Nagel LLC. He has represented HOAs for 17 years.

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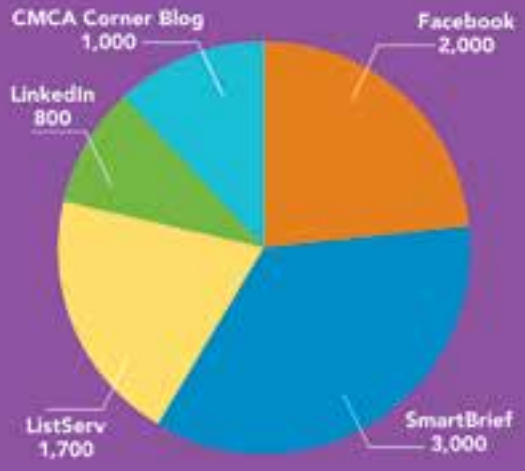

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CAI-RMC MISSION STATEMENT

To provide a membership organization that offers learning and networking opportunities and advocates on behalf of its members.

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Brian Berge

Ian Broughton

Christopher Falasco — Endeavor Exteriors

Michael-James Johnson

Shanna Massler — HAVEN Property Managers & Advisors

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Alpine Corporate Accommodations

John O'sullivan — Van Deusen & Associates, Inc.

Ana L. Peterson —
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Cristian Pintea — 4 Seasons Management Group, LLC

Joshua Beau Riley, CMCA —
Beaver Creek Mountain Lodging by East West

Stacey Ronczy — Sopra Communities, Inc.

Nicole Stone — LMI Landscapes, LLC

SAVE THE DATE

OCTOBER

11 **Mountain Education** • *Vail*
12 **Mountain Education** • *Breckenridge*
12 **Manager's Lunch** • *Denver*
18 **Mountain Education** • *Steamboat Springs*
19 **M-204** • *Broomfield*
24 **Membership Orientation** • *Greenwood Village*
24 **Lunch & Learn** • *Greenwood Village*

NOVEMBER

14 **HOA Roundtable** • *Thornton*
2 **Fall Conference & Trade Show** • *Denver*

DECEMBER

7 **Awards and Gala**
14 **Manager's Lunch** • *Denver*

COMMON INTERESTS

Editorial Calendar

Issue	Topic	Article Due Date
August	Finance	06/26/2017
September	Construction	07/28/2017
October	Security/Safety	08/25/2015
Nov/Dec	Maintenance & Mechanical	09/29/2017

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CAI-RMC EVENT CALENDAR

JUNE	
22 Thu	**M-201** Beaver Creek
23 Fri	**Annual Golf Tournament** Thornton

AUGUST	
4 Fri	**Annual Summer Carnival** Centennial
10 Thu	**Manager's Lunch** Highlands Ranch
23 Wed	**M-100** Broomfield
26 Sat	**Board Leadership Development Program** Denver

SEPTEMBER	
9 Sat	**Harvest Fest** Thornton
12 Tue	**HOA Roundtable** Centennial
15 Fri	**DORA Day & Happy Hour** Westminster
15 Fri	**Business Partner Education** Westminster
18 Mon	**Mountain Conference** Vail Marriott Mountain Resort

For the latest information on all our programs, visit www.cai-rmc.org!
Don't forget to register for events as prices are significantly higher the day of the event.