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JUNE 2013

A Bright FUTURE

Solar Power Is Growing Quickly but Condominiums Aren't Lining Up for it — Yet

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CONDO MEDIA
The Official Publication of CAI New England

TABLE OF CONTENTS • JUNE 2013 • VOLUME XXIV, NO. 6

Cover Story
Page 28

A BRIGHT FUTURE
Solar Power is Growing Quickly, but Condominiums Aren't Lining Up for it—Yet

By Nena Groskind

NEW ENGLAND CHAPTER
community ASSOCIATIONS INSTITUTE

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In Every Issue

Columns

Features

Resources

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The Official Publication of CAI New England

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Planning and Programming

As we all anticipate the lazy, hazy days of summer, rest assured that there will be no lazy days at the chapter office or for the dozens of chapter committees and members from around New England. Yes, we'll make time for summer vacations and perhaps a long weekend here and there, but over these next few months chapter staff and volunteer leaders will be busy working on new programs and a variety of resources for the benefit of our members and *Condo Media* readers.

Chapter committees will be busy planning and scheduling fall programs, including the annual CAI New England Chapter Conference and Expo in Marlboro, Mass., several other homeowner and manager seminars like the Maine Condo Forum, Vermont Regional Conference, and Rhode Island Managers Expo, and new Webinar programs. Committee members will focus on the creation of on-demand programming and new ELN networking events and will continue to enhance major chapter resources including the chapter website, digital magazine, and career center.

And of course, while planning to finalize and deliver these many programs and member benefits for the fall of 2013, volunteer leaders will be looking ahead to 2014. Having just returned from the CAI National Conference and CED/President-Elect training in San Diego, Calif., with incoming president Frank Lombardi, I look forward to working with Frank in continuing to bring to our members some of the best chapter programs and events around the country.

Yes, it will be a busy summer for volunteer leaders and staff, with much for members to anticipate for the fall and into the coming year. Wishing you all a relaxing and fun-filled summer with family and friends and looking forward to seeing you at the many upcoming events.

Sincerely,

Chapter Executive Director

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Jared McNabb, CMCA, PCAM | *President*
McNabb, a community association manager with Crowninshield Management Corporation, has chaired the membership committee since 2005, was 2009 chapter president, and is currently serving on the CAI-NE board.

Wesley K. Blair, III | *Vice President*
Blair is senior vice president of Brookline Bank, has chaired the CAI-NE communications committee, and is a past president of CAI-NE and *Condo Media*. He is a founding member of the chapter *Condo Media* board.

James Connolly | *Treasurer*
Connolly, a manager with Thayer & Associates, Inc., was elected to a second three-year *Condo Media* board term commencing in 2010. He has served as *Condo Media* treasurer since 2007 and has been involved with the chapter for more than 15 years.

Ellen A. Shapiro, Esq. | *Clerk*
Shapiro is a partner in the firm Goodman, Shapiro & Lombardi LLC. She served two CAI-NE board terms, was CAI-NE chapter president in 2006, *Condo Media* president in 2007, and was elected to a second *Condo Media* board term in 2009.

Richard Brooks, Esq. | *Director*
A partner in the firm Marcus, Errico, Emmer & Brooks PC, Brooks served as CAI-NE chapter president in 1998 and 2008 and *Condo Media* president in 2009. He was elected to a third *Condo Media* board term in 2011.

Claudette Carini, CED | *Director*
Carini has held the position of CAI-NE chapter executive director for more than 18 years. In addition to overseeing magazine editorial and production, she brings story and magazine design ideas for board consideration.

Jack Carr, P.E., RS, LEED-AP | *Director*
Jack Carr is senior vice president with Criterium-Engineers in Portland, Maine, and has been involved with CAI and *Condo Media* for more than a decade. A member of the Maine Regional Committee, he is serving his second term on the *Condo Media* board.

Richard Churchill | *Director*
Churchill, president of The GroundsKeeper Inc., has served two terms on the CAI-NE board since 2001 and was elected to a third *Condo Media* board term in 2011.

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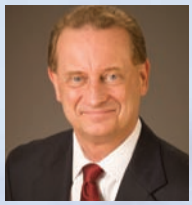

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CAI NEWS

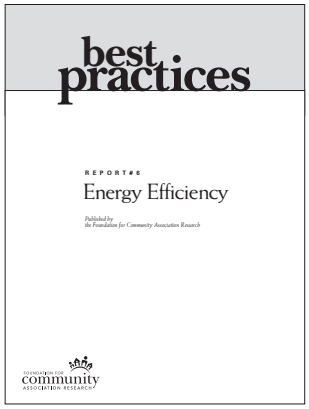
MEMBERSHIP NEWS

Energy Efficiency Report Provides Resources for Associations

In 2007, it was estimated that the average U.S. family spent nearly $1,300 per year on energy bills, with much being wasted due to air leaks, inefficient appliances, and a general lack of attention to the important issue of energy efficiency. With more than 60 million Americans living in an estimated 305,000 association-governed communities around the country, CAI and the Department of Energy (DOE) are dedicated to educating the community association industry on ways to increase the energy efficiency of their homes, thereby reducing both energy consumption and costs.

The Foundation for Community Association Research, Best Practices Report #6, *Energy Efficiency,* provides information in the following important energy-saving areas:

- Retrofitting both existing homes and community structures, such as clubhouses. This section also will provide tips for energy efficiency related to appliances, insulation and weatherization, heating and cooling, landscaping, lighting, and windows.
- Using the increasing support of the "Building Green" movement, including the DOE's Building America program. The report also highlights one of the first communities built to be energy efficient through the use of construction improvements and solar energy.



- Gaining ideas from case studies of community associations across the country that have been successful in reducing energy consumption and costs.

The Foundation for Community Association Research is dedicated to conducting research and acting as a clearinghouse for information on innovations and best practices in community association creation and management. As part of the Best Practices project, the foundation has published Best Practices Reports related to various functional areas of community associations including Community Harmony and Spirit, Community Security, Financial Operations, Governance, Green Communities, Reserve Studies/Management, Strategic Planning, and Transition. All Best Practices reports are available for free download at www.cairf.org. CM

Top Hits on the CAI-NE Website

www.caine.org

The CAI-NE website — www.caine.org — provides invaluable resources and information for volunteer board members and industry professionals. Check out the following pages.

- **Helpful Resources:** 2013 Legal Directory
- **Feature Article:** Members Applauded at Awards Dinner
- **Program & Event Registration:** Cape Cod Condo Forum & Expo
- **Industry News & Forms:** Community Association Living
- ***Condo Media* Magazine:** Subscribe Today!

CAI-NE Welcomes New/Renewing Members

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- **Webster Bank,** Jordan Arovas

Calendar of CAI-NE Programs

Upcoming Events

June

6 **20th Annual CAI-NE Golf Tournament**
• 9:00 a.m. - 6:00 p.m.
The International Golf Club
Bolton, Mass.

11 ***Condo Media* Board Meeting**
• 8:00 a.m., Wellesley, Mass.

12-13 **Buildings & Facilities Management Show & Conference**
• Boston, Mass.

19 **Attorneys' Committee Meeting**
• 6:30 p.m., Location TBD

20 **Cape Condo Forum & Expo Dinner**
• 3:00 p.m. - 8:00 p.m.
DoubleTree by Hilton, Hyannis, Mass.

20-22 **M-100 Essentials of Community Association Management**
• Manchester, N.H.

27 **Dealing with Difficult Owner Issues**
• 9:00 a.m. - noon
Location TBD

July

9 **CAI-NE Board Meeting**
• 8:00 a.m., Wellesley, Mass.

9 ***Condo Media* Board Meeting**
• 10:00 a.m., Wellesley, Mass.

18-19 **M-201 Facilities Management***
• Natick, Mass.

25 **Board Authority and Responsibility**
• 1:00 p.m. - 2:30 p.m.
Webinar

25-27 **M-100 Essentials of Community Association Management**
• Mystic, Conn.

**All PMDP programs are approved for continuing education for CMCA. AMS recertification requires at least one PMDP 200 Series course every three years. To register for PMDP programs, go to www.caionline.org.*

JUNE 6

20th Annual CAI-NE Golf Tournament
9:00 a.m. - 6:00 p.m.
The International Golf Club, Bolton, Mass.
Join hundreds of industry colleagues and peers for a day of networking, golf, and fun. New England's premier golf destination, The International Golf Club, offers golfers a once-in-a-lifetime opportunity to play one of the most coveted courses in the area. The tournament will be followed by dinner and a silent auction to benefit Homes for our Troops. Non-golfers welcome.

JUNE 11

***Condo Media* Board Meeting**
8:00 a.m.
Wellesley, Mass.

JUNE 12-13

Buildings & Facilities Management Show & Conference
Boston, Mass.
This two-day event features hundreds of exhibitors displaying products and services necessary for the operation, management, maintenance, and renovation of buildings and facilities in the greater New England region. Running concurrently with the trade show is an educational conference featuring one-hour talks covering a wide range of topics.

JUNE 19

Attorneys' Committee Meeting
6:30 p.m.
Location TBD
An opportunity for CAI-NE member attorneys to share their comments and concerns about condominium case law and recent court decisions.
Open to CAI-NE member attorneys in good standing.

JUNE 20

Cape Condo Forum & Expo Dinner
3:00 p.m. - 8:00 p.m.
DoubleTree by Hilton, Hyannis, Mass.
This annual forum and expo provides the opportunity for those living in or managing community associations to learn essential and relevant skills that will create and maintain community harmony and financial stability. Professionals will present timely information and discuss those issues that challenge board members and professional managers. Ask questions, get detailed explanations, and meet local industry suppliers and vendors.
Approved for five points for CMCA continuing education.

JUNE 20-22

M-100 Essentials of Community Association Management
Manchester, N.H.
A successful management career begins with "The Essentials," a comprehensive community association management course that provides a practical overview for newer managers, an essential review for seasoned professionals, and an advanced course for community association board members.

JUNE 27

Dealing with Difficult Owner Issues
9:00 a.m. - noon
Location TBD
Every day, routine questions and concerns in a condominium setting can challenge owners, boards, and association managers. But what happens when the questions and situations are anything but routine or ordinary? Speakers will address a variety of issues ranging from physical and emotional disabilities and reasonable accommodations to smoking, noise, and hoarding. In addition, questions surrounding aging residents, hostile environments, and rules enforcement will be explored.
Approved for three points for CMCA continuing education.

JULY 9

CAI-NE Board Meeting
8:00 a.m.
Wellesley, Mass.

JULY 9

***Condo Media* Board Meeting**
10:00 a.m.
Wellesley, Mass.

JULY 18-19

M-201 Facilities Management*
Natick, Mass.
Learn how to preserve and enhance your association's property and prepare for emergencies. This course provides a hands-on approach to help you analyze, evaluate, communicate, and plan for property maintenance. Your community will benefit from your increased understanding of the various types of maintenance — routine, previous, emergency, corrective, and scheduled.

JUNE 25

Board Authority and Responsibility
1:00 p.m. - 2:30 p.m.
Webinar
The role of the board, unit owners, and the manager should be clear and distinct. When responsibilities are not well defined or are misunderstood, chaos ensues and communication breaks down. Learn how boards, owners, and managers should interact and understand the authority and responsibility of association decision makers.
Approved for one point for CMCA continuing education.

JULY 25-27

M-100 Essentials of Community Association Management
Mystic, Conn.
A successful management career begins with "The Essentials," a comprehensive community association management course that provides a practical overview for newer managers, an essential review for seasoned professionals, and an advanced course for community association board members.

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Select your Chapter: NEW ENGLAND
Recruiter Name/Co. Name: _____

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❒ 2 Member Board	$200
❒ 3 Member Board	$275
❒ 4 Member Board	$345
❒ 5 Member Board	$395
❒ 6 Member Board	$445
❒ 7 Member Board	$500

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❒ Technology Partner
Please specify _____
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Total Membership Dues above include $15 Advocacy Support Fee

PAYMENT METHOD ❒ Check Enclosed ❒ VISA ❒ MasterCard ❒ AMEX

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cai MORTGAGEMATTERS

CAI Continues Fight for FEMA Disaster Relief Equality

Since the beginning of the year, CAI has continued to step up its efforts to secure access to federal disaster relief funds for community associations across the United States. CAI members impacted by Hurricane Sandy continue facing high recovery costs as local governments are being denied Federal Emergency Management Agency (FEMA) reimbursement for debris removal and other disaster recovery expenses in community associations.

CAI has engaged both federal legislators and regulators in an attempt to secure additional resources and flexibility for FEMA to fully respond to the aftermath of Hurricane Sandy. In 2013, CAI has met with the offices of U.S. Senators Robert Menendez (D-NJ), Frank Lautenberg (D-NJ), and Tim Scott (R-SC) as well as U.S. Representatives Steve Israel (D-NY) and Eric Swalwell (D-CA). Additionally, in April, CAI sat down with regulators from FEMA's public assistance team to further discuss regulatory solutions to the inequity that exists toward community associations.

For decades, community associations have been denied equal access to federal disaster recovery assistance. With the efforts of CAI and its members, this can change. During CAI's FEMA disaster relief fairness campaign, talking points have been developed to better educate members, legislators, and the public.

Primary Talking Points

1) FEMA officials have been inappropriately applying the Stafford Act (the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which allows for financial assistance to states, counties, and municipalities, as well as eligible "private nonprofit facilities"), preventing community associations from receiving federal disaster assistance. FEMA has determined that the particular nature of housing cooperatives, condominiums, and homeowner associations prevents these communities from benefitting from federal disaster relief efforts.

2) FEMA determined community associations collect assessments for the maintenance and repair of common areas and therefore FEMA cannot duplicate these association activities in disaster recovery. This finding disregards the fact that community associations do not collect assessments for recovery from presidentially declared disasters. When these disasters strike, people living in community associations, like Americans in other forms of housing, do not have adequate resources to fully recover on their own.

3) FEMA has repeatedly refused to reimburse municipalities that provide disaster recovery services to community associations on the basis that any federal assistance would be a "duplication of benefit." FEMA's position ignores the fact that assessments cover routine maintenance of common property and fund reserves for long-term repair or replacement costs. Associations do not have the resources to prefund recovery costs for losses incurred in a presidentially declared natural disaster.

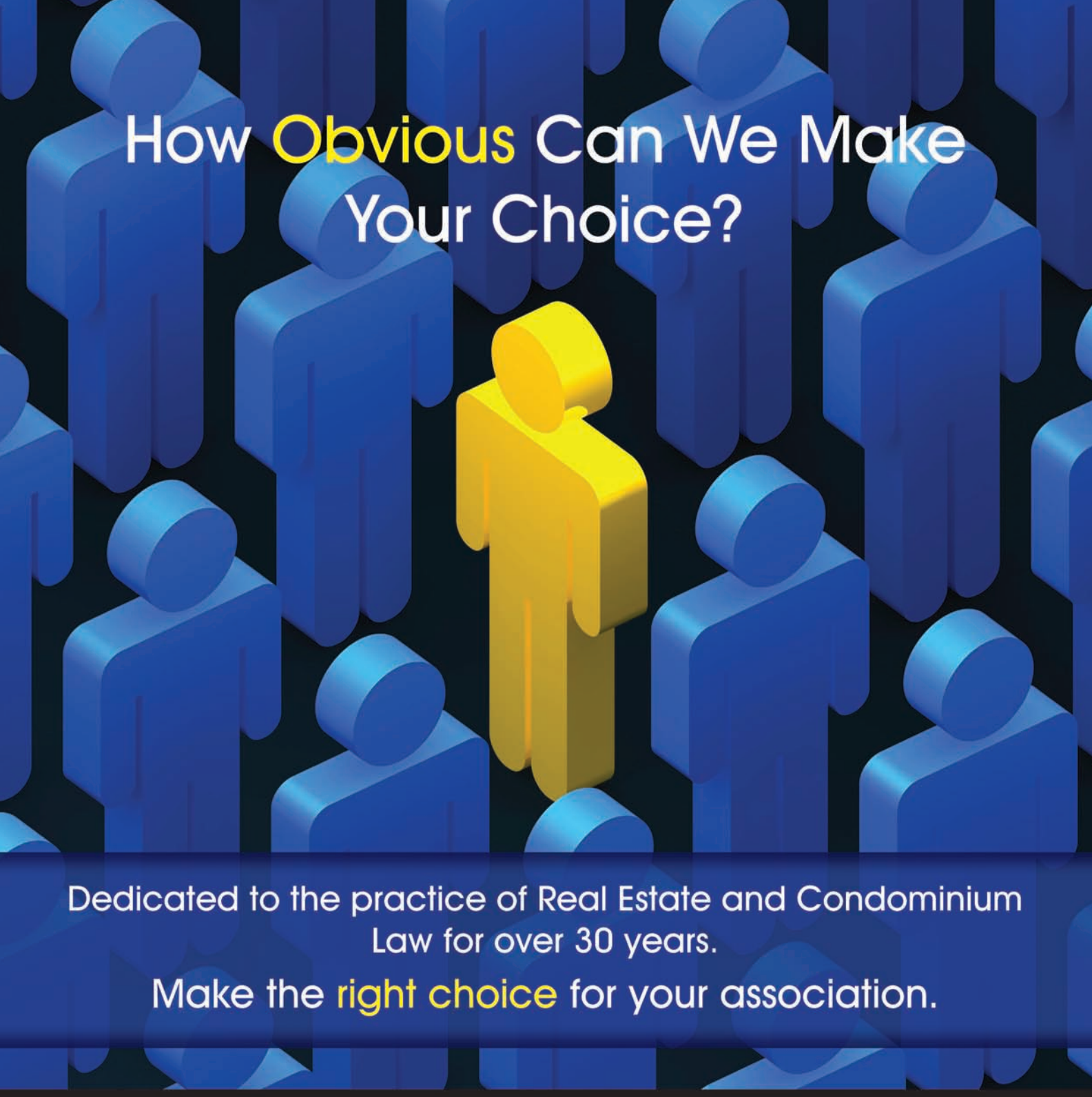
4) The rejection of FEMA funds for community associations on the grounds of duplication of benefit would be similar to a municipality being denied federal disaster assistance because it taxes property owners and may use these proceeds in disaster response and recovery. FEMA would never deny assistance to a municipality on this basis, but it uses this logic to deny disaster recovery assistance to community associations. FEMA routinely issues exceptions to its standards to allow municipalities to clear debris from non-residential private property, but will deny reimbursement if debris removal takes place in a community association.

5) Presently, individual homeowners may apply for FEMA grants to restore the interior of their units or their individual homes, while a community association may not request a FEMA grant to repair an exterior roof, remove debris from essential roadways in their community, or replace any vital operating systems destroyed by a natural disaster.

6) Owners in community associations pay the same taxes and are served by the same municipal emergency services such as fire and police that are provided for residents living outside of associations. Owners in community associations must likewise receive the same federal benefits as all other residents within a jurisdiction in the aftermath of a natural disaster.

7) Although community associations may carry insurance to cover damages, these policies generally do not cover or are exhausted by major natural disasters. Similarly, non-association homeowners generally carry insurance to repair their property in case of damage. Yet FEMA does not see this as causing a homeowner to be ineligible for FEMA funds.

8) For decades, community associations have been denied equal access to federal disaster recovery assistance. With your help and voice, this can change. Federal legislators must encourage FEMA to adjust its interpretation of the Stafford Act that classifies housing cooperatives, condominiums, and homeowners associations as business associations. CM



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CAI-NE challenges you and your association to be on the path from "Good to Great." We share excerpts below from CAI's "Good to Great" brochure. The ideas and guidance conveyed in the brochure speak to these core values and can, with commitment, inspire effective, enlightened leadership and responsible, engaged citizenship.

A list of 12 basic principles developed by CAI can help any association board increase harmony, reduce conflict, and build a stronger, more successful community. The first two basic principles are:

1. Annual Meetings. Conduct at least one membership meeting annually, providing at least two weeks notice to homeowners and more than two weeks if specified in the governing documents or dictated by state statute.

2. Assessments. Collect assessments and other fees from homeowners in a timely and equitable manner and in accordance with state statutes and board-approved procedures.

For a complete listing of all 12 basic principles visit www.caionline.org for a free "From Good to Great" brochure that also includes:

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M-206 >>> Financial Management

- ❑ September 19-20, 2013, Lebanon, NH

Learn the entire budget process, from identifying line items to reconciling accounts to gaining board approval and learn how to analyze and report on association finances.

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M-370 >>> Managing Developing Communities

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MAINE

by Jack Carr, P.E., RS, LEED-AP

Failing Facades

What's a Board to Do?

No matter what type of building you live in, the façade will begin to fail one day. Whether it is water infiltration, spalling concrete, crumbling brick, or cracking wood, it is only a matter of time. I do not want to turn your building committee into structural engineers or forensic investigators — after all, I have to consider job security — but there are some techniques or terminology you might want to be familiar with when it is your time to face a building exterior problem.

The Role of Water

The villain in most façade failure mysteries is typically water. It causes corrosion, erosion, internal leaking, paint peeling, rot, settlement, and a host of other building envelope woes. If your building has concrete elements suffering from spalling or cracking it might be due to the reinforcing steel in the concrete becoming heavily corroded due to water penetrating the surface. Ordinary rust scale expands with incredible force per square inch when confined — think bulldozer power.

Many absorptive façade materials (concrete, sandstone, mortar, fired-clay masonry) can be seriously damaged by cyclical freezing and thawing of water entering the material through natural porosity or surface hairline cracks. These pockets of moisture can be trapped in façade walls whose freezing can expand, causing further cracking, spalling, or displacing adjacent masonry by a phenomenon called ice lensing.

This spalling can create dramatic loss of structural integrity to parapet walls, retaining walls, and cantilevering decks, not to mention the safety hazards from falling façade components. Complicating the diagnosis problems and the repair solutions is that spalling concrete can be caused by forces other than water. Similar concrete failures can manifest themselves by compression, tension, or vibration overloading.

Material Matters

Equally important in a façade investigation is understanding what materials make up the façade, as looks can be deceiving. Most of the old brick buildings in major cities use the exterior brick to support the interior floor framing and are thus called "bearing wall masonry." These heavy walls were designed to prevent moisture from entering into the building's interior spaces by the brick absorbing water in its multi-layers of brick and drying out when the weather improved. Over a hundred years ago, steel framing was introduced, allowing the building designer to hang the exterior façade skin on the perimeter of the frame to produce more lightweight and cost-effective buildings. Today's brick building uses brick as a veneer in which the brick is only the first line of defense against water infiltration. The brick actually shields the true water barrier sheathing behind a cavity space. This cavity acts as a drainage channel with weep holes at the bottom of the brickwork.

Similarly, many older buildings are covered with a stucco façade surface, which is a cement parge coating over a steel lattice similar to plaster placed onto wood lathe strips. Modern buildings use an Exterior Insulation Finishing System (EIFS) seen on many condominium and retail building exteriors. An EIFS façade depends on interior drainage surfaces and is totally different in repair methods than stucco.

In addition to judging the cause of the façade problem, it is important to determine its seriousness and whether immediate repair steps are necessary. If it is not an "active" problem, it can be set aside in favor of other more pressing issues requiring capital outlays from the reserve fund.

To address these questions, there are a variety of invasive and non-invasive techniques to investigate the problem. If the concern is corroding imbedded steel, there are firms providing chloride ion content testing of concrete or mortar to gather quantitative evidence of corrosion potential. Simple stain gages can be placed over cracks to detect active movement. Infrared thermography can discover unseen façade connection failures, delaminations, or thermal "short circuits" due to wet insulation. There are a variety of water moisture content meters available at building supply stores and woodworker hobby shops that can accurately detect and measure moisture in a variety of materials including wood, drywall, and concrete.

So the good news is there is plenty an observant building committee or property manager can do to prevent small façade problems growing into something major. CM

Jack Carr, P.E., RS, LEED-AP, is senior vice president with Criterium-Engineers in Portland, Maine. He is a member of the Condo Media *board and a frequent author and speaker.*

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by Jennifer L. Barnett, Esq.

By the Documents

Enforcing Rules and Policies

Condominium boards may enact rules and regulations and/or adopt amendments to the master deed and/or by-laws in order to protect, preserve, and maintain the common areas and facilities. It is recommended that boards consult with legal counsel in deciding whether the board may achieve its goals through its adoption of a simple rule or regulation, or whether the board must amend the condominium's master deed and/or by-laws with the requisite unit owner consents, particularly where the board is seeking to regulate the use of the units.

Often times, a board will adopt policies in response to a particular occurrence and/or event. For example, a board may adopt a rule requiring that hot water heaters be replaced every five years, following past water heater failures resulting in considerable damage, or a board may adopt a policy requiring that thermostats in every unit be kept above a certain temperature in order to prevent pipes from freezing. Insurance carriers may also require that boards take certain preventative measures, including but not limited to replacing outdated and/or faulty light fixtures and conducting smoke detector and/or carbon monoxide detector testing. Usually, unit owners will comply with preventative rules and regulations without issue.

When Owners Won't Comply

However, there are times when a unit owner may refuse to comply with a policy or rule adopted by the board, citing concerns of cost and/or convenience. Many times, these issues can be resolved by attempting to reach an accommodation with the unit owner through agreeing to a mutually acceptable repayment plan if there is a cost involved and/or rescheduling the time that the unit owner needs to make their unit available. Boards may also consider assessing reasonable fines if the unit owner refuses to comply with a particular rule or policy. However, fines do not necessarily guarantee that the unit owner will ultimately comply with the particular rule or policy at issue, and there may be instances where despite a board's best efforts through either accommodation or fining, a unit owner will not comply with a duly adopted rule or policy, and the board may be left with no meaningful alternative but to seek injunctive relief from the court.

Fines do not necessarily guarantee that the unit owner will ultimately comply with the particular rule or policy at issue, and the board may be left with no alternative but to seek injunctive relief from the court.

In Massachusetts, the standard for obtaining a preliminary injunction is 1) a showing of immediate and irreparable harm; 2) a balancing of the harm to each party; 3) a reasonable likelihood of success on the merits; and 4) a consideration of the public interests. (Nolan, 31 Massachusetts Practice Series, Equitable Remedies Sec. 129; Commonwealth v. Mass. CRINC, 392 Mass. 79 (1984); Alexander and Alexander, Inc. v Danahy, 21 Mass. App. 488 (1986).) Before any analysis is made as to a balancing of the relative harms and of the public interest, the court must first conclude that the moving party enjoys a reasonable likelihood of success on the merits and will suffer irreparable harm in absence of the requested relief. Assuming the court finds a reasonable likelihood of success on the merits and that the threat of immediate and irreparable injury exists, the Court must then balance the respective harms to the parties if the requested relief is granted. (Packaging Industries Group, Inc. v. Cheney, 380 Mass. 609, 616-17 (1980).) The threatened injury to the moving party must outweigh the harm the Order would cause the opposing parties. While all four factors are required, they are interrelated, and the court must consider them together; the strength of one factor may offset the weakness of another. (McLaughlin by McLaughlin v. Boston School Committee, 938 F.Supp. 1001 (D.Mass. 1996).)

Governing Documents Control

In advancing its claims to compel compliance with a particular rule

or policy, the board will often cite to the controlling provision of the condominium's governing documents, and will likely argue that the enforcement of the governing documents meets the reasonable expectations of the association of unit owners. To that end, as noted in Noble v. Murphy, 34 Mass.App. Ct. 452 (1993), enforcement of valid condominium restrictions maintains "the value of meeting the reasonable expectations of the … unit owners and … their right to freely associate by contract with persons of like expectations … " 34 Mass. App. Ct. at 459. The board may also argue that the enforcement of the governing documents is in the interests of the entire association of unit owners, and that one unit owner should not be permitted to put his or her own concerns regarding cost and/or convenience over the risk to the condominium's common areas and/or facilities, and the risk to the health, safety, and/or well-being of the other unit owners, in the absence of injunctive relief. While a unit owner may disagree with the condominium's governing documents, it does not give him or her the right to ignore them, or to act in complete disregard for the same, especially as the enforcement of the governing documents is for the benefit of the entire community association, of which the unit owner is also a part.

Through its request for injunctive relief, a board may ask for various forms of relief, including but not limited to an order compelling the unit owner to comply with the particular rule or policy within a specified period of time, and in the event of non-compliance within such time, an order that the board and/or its agents, employees, and/or assigns be permitted to take the necessary action on behalf of the unit owner, and to assess the costs and expenses relating to the same back to the non-complying unit owner.

Under G.L. c. 183A, §6(a)(ii), the board may assess the unit owner the expenses incurred by the association as a result of their failure to comply with the condominium's governing documents, however as such assessment constitutes a non-priority lien, the board should still be mindful of incurring needless and/or avoidable expense, through its efforts to enforce the condominium's constituent documents.

Jennifer L. Barnett, Esq. is an associate with the law firm of Marcus, Errico, Emmer & Brooks, PC in Braintree, Mass. She is co-chair of the chapter's program advisory council and a frequent author and speaker.

The board may argue that one unit owner should not be permitted to put his or her concerns over the risk to the condominum.

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RHODE ISLAND

by Frank A. Lombardi, Esq.

Developer Loans

"Well, Surprise, Surprise, Surprise!"

Usually, when I speak or write about the benefits of association loans, it concerns those loans made to associations by specialty lenders. The proceeds can be used to fund any number of capital improvement projects as the condominium's building and grounds start and continue to deteriorate. Further, these loans can most times be a welcome alternative to a special assessment. Today's discussion, however, is not about loans from banks, but from developers.

Specifically, I recently addressed a new board of directors for a condominium association that had just transitioned from developer control. From what I gathered from the board, during the transition meeting, the developer gave the unit owners copies of the "financials" for the first three years of operation, and indicated that he had advanced his own monies to the association to cover operational shortfalls. So, then, rather than raise the monthly assessments during the three-year sale period, he lent the association the money and upon his departure, politely requested that the loan be paid back. No worries, the developer says, you can pay me back over five years, and oh, one more thing, I won't be doing the final asphalt coat on the driveways and roadways until you commit to paying the loan back. Though I am dating myself, some of you will remember Jim Nabors's character, Gomer Pyle, famously saying: "Well, surprise, surprise, surprise!"

Is it Legal and Legitimate?

One of the first concerns I have about this "loan" is whether or not it is legal. Under the statute, RIGL 34-36.1-3.02 (a) (17), and further, under most condominium bylaws, an association may borrow money. Under the statute, an association must be formed once the first unit in the project has been sold. While technically, the association had been formed and thus had powers to borrow, a board had not been formed as the developer was as they say, the chef, cook, and bottle washer and was calling the shots. Under Rhode Island law, during this pre-transition period, acting as an association, the developer had a fiduciary duty to the unit owners. In my opinion, as a fiduciary, he had an obligation to disclose to each unit owner that a) there was a budgetary shortfall and b) rather than specially assess the unit owners as permitted by the declaration, he would be advancing funds to be paid back at a later date with specific terms and conditions.

My second concern was whether the amount of the advancement/loan was for a legitimate purpose. In other words, were the funds used to cover unanticipated expenses, i.e. snow removal during an unusually harsh winter? Also, were the funds used for operational expenses, i.e. grass cutting for units declared and part of the association, or were they used for developer related expenses, i.e. initial lawn installation? Was the insurance figure in the budgets for the condominium's master policy, which would be an association expense? Or, was it for insurance covering buildings while under construction, i.e. builder's risk, which would be a developer expense? If the expenses were developer related,

then the board would have no obligation to pay this supposed loan back.

Unrealistic Projections and Expectations

Even if we can determine that the advance was valid and that the actual expenses advanced were for the condominium's operational issues and not developer related, the developer would still not be out of the woods yet. My third concern here would be whether the developer knew or reasonably should have known that the budget estimates stated in his Public Offering Statement were unrealistic and unreasonably low so as to lead a potential buyer to believe that the condo fees would be lower than they should be. This is a practice commonly called "low balling." If the estimates were in fact set unreasonably low and the buyers reasonably relied on them before purchasing the units, then although the expenses and advances were legitimate, an argument could be made that the buyers were damaged by the difference between the amount quoted and the actual amount. It would be no surprise then if the set off for the damages was that amount advanced/lent.

My fourth and last concern would be the developer's holding out the possibility that unless a commitment to pay back the loan is made by the post transition association, then the final build-out work (asphalt) would not be completed. In response, before the issues become ramped up into a lawsuit by the association for construction defects, breach of fiduciary duty, etc., with a developer's counterclaim for monies lent, unjust enrichment, etc., I would suggest that the best course of action would be to indicate that the board will consider paying the amounts advanced back over an extended period of time provided the developer can prove that the expenses were legitimately for the association and not developer related. I would thereafter politely, but firmly, remind the developer that there must be no nexus between paying the loan back and doing the finish work promised. Unfortunately, sometimes polite reminders do not work.

What's comforting here though is that the Rhode Island Condominium Act is at its heart a consumer protection act, and, as such, if the expenses were illegitimate, if in fact there was low balling to increase sales, and/or if there was a subtle form of extortion by setting conditions upon what was supposed to be an unconditional obligation to complete the asphalt work, then the developer would be facing punitive damages if the association should prevail at trial. When faced with this set of facts, the judge may in fact cite Gomer Pyle's other famous saying: "For shame, for shame, for shame." Whenever I hear a judge say something like that, chances are that the developer will not leave the courtroom a happy camper. CM

Frank A. Lombardi, Esq. is a partner with the firm of Goodman, Shapiro & Lombardi, LLC in Providence, R.I. He is the 2013 CAI-NE president-elect and a frequent Condo Media *author and chapter speaker.*

VERMONT

by Nena Groskind

State Urges Residents to "Take the Energy Challenge"

Effort Centers on Weatherizing Homes

Efficiency Vermont (EV), a state agency charged with helping residents reduce energy costs and protecting the environment, is urging Vermonters to "take the challenge" and participate in a statewide initiative aimed at improving the energy efficiency of more than 3,500 homes this year.

Local energy advocacy groups in more than 75 communities have signed on for the project, sponsored jointly by EV and the Vermont Energy and Climate Action Network and backed by Gov. Peter Shumlin, who unveiled the plan at a press event earlier this year.

Participating groups will sponsor grassroots efforts to encourage residents to weatherize their homes. If they hit the target (3,500 homes), the effort will slash heating costs by more than $2.6 million annually — the equivalent (in the reduction of greenhouse gas emissions) of taking more than 1,300 cars off the road. The energy saved could heat more than 650 homes for an entire year, Gov. Shumlin noted in announcing the program.

"Dollar for dollar, we know that energy efficiency is one of the best investments there is," he said. "It cuts energy bills, keeps more money in our state's economy, and creates jobs for builders and contractors around the state. That's a great story for Vermonters to share as they mobilize for the 2013 Home Energy Challenge."

Residents will have to pay for the energy improvements themselves, but their costs will be reduced by a variety of government and utility company rebates.

In Brattleboro, the goal is to weatherize half of the community's single-family homes and apartments within the next 20 years. The effort would reduce overall energy costs by between 20 and 30 percent and save residents an average of $1,000 annually, according to Paul Cameron, executive director of Brattleboro Climate Protection and energy coordinator for the town.

"This is money that will stay in our communities, rather than leaving to pay oil companies," he told *The Commons.* In addition to improving the quality of the community's housing stock, he noted, the project will reduce dependence on foreign oil and shrink the community's "carbon footprint" as well.

"I think many homeowners and landlords here want to weatherize their homes," he told *The Commons,* "but they need support and information, which is what we are providing with the Challenge." CM

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Energy Upgrades

Incentive Dos and Don'ts

QUESTION: Many of the units in our older community (built in the 1960s and converted in the late 1970s) still have the original furnaces. Heating is a common expense and as our gas bill continues to increase, it would seem to make sense to encourage owners to replace these furnaces with more energy-efficient models. Because two past studies have concluded that the cost of sub-metering would be prohibitive, we (members of the board) are wondering: Would it be permissible to offer owners who replace their furnaces a discount on their common-area fees, so those with less efficient models, in effect, pay a larger share of the association's energy costs?

ANSWER: In a word, no. The attorneys we consulted pointed out that common-area fees, by law, must be based on the percentage ownership interest in the community, which doesn't leave you any wiggle room on the common-fee front. But there are other alternatives your board might consider to reduce your energy costs.

The Massachusetts condominium statute allows associations in which utilities are not separately metered to require owners to have installed in their units, at the owners' expense, a number of energy-conservation "devices," including but (in the words of the statute) "not limited to" low-flow toilets and shower heads, faucet aerators, and storm windows, among others.

Before your board can impose this requirement, a majority of the owners attending a meeting to vote on the proposal must approve it. While furnaces are not among the devices named specifically in the statute, our legal sources agreed that it is likely (although not certain) that a court would side with the association if owners challenge an order to replace the equipment.

As a first step, boards should compile detailed information about the cost savings that energy-efficient furnaces would produce, including estimates of how long it will take owners to recover the investment they make in new equipment. Additionally, utility companies often offer rebates on new equipment and other incentives to encourage energy conservation, and the board should compile information on those programs as well.

But before you consider mandating the replacement of outdated, inefficient furnaces, you might want to reconsider your conclusion, based on "past studies" that sub-metering in your community would not be cost-effective. You didn't indicate when those "studies" were conducted, but studies with which we are familiar have consistently reached the opposite conclusion, which the experience of many communities has confirmed: There is no better means of promoting energy conservation than making owners pay individually and directly for the energy they consume. CM

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Saving Energy to Stay Cool

Simple Steps for Homeowners

Energy bills — like the temperature — always rise in the summer. But don't fret: While there are big fixes* you can incorporate to make your home more energy-efficient, there are also many inexpensive or free solutions that can help you cut down on costs.

Turn it up.

Set your thermostat as high as possible. Start with 78 degrees when at home and 85 degrees when away. For each degree above 72 you set the thermostat, you save between 1-3 percent. Be sure to take into consideration your health and comfort, and drink plenty of fluids to stay hydrated.

Circulate air.

Use fans to keep the air moving in your home. Ceiling fans, in particular, can make it cooler by at least four degrees. This could translate into a significantly lower monthly electric bill, as ceiling fans only use about as much energy as a 100-watt light bulb.

Shut the shades.

Windows allow a lot of heat into your home. Keep drapes and shades closed during the day to keep the temperature down.

Open nights.

At night, if it's cooler outside than in, open your windows! Not only will this bring some fresh air into your home, it will give you a chance to turn off that AC. Also, be sure to close your windows in the morning to keep the cooler air in longer.

Wash and dry wisely.

Run only full loads when using your dishwasher or washing machine. Whenever possible, run those appliances during off-peak hours or when your air conditioner is turned off or barely running, which typically is during the evening, to save energy. Use the clothes dryers' moisture-sensing automatic drying setting if it has one, and clean your clothes dryers' lint trap after each use.

Unplug.

Electronics — such as TVs, chargers, and computers — use electricity even when they are turned off. By unplugging these devices when you're not using them, you only save a few watts, but they add up to bigger savings over time. Use a power strip for multiple devices, and switch it off before you go to bed. Also, turn off lights in unoccupied rooms.

Plan pool time.

If you have a pool, shorten the operating time if possible. Switch the pool filter and sweeper operations to off-peak hours and during nighttime if the pool has automatic cleaning settings. CM

*As always, be sure to consult with the association to get approval for any major renovations on your home.

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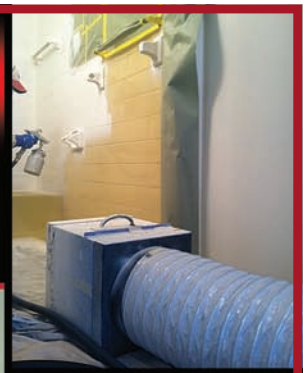

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by David R. Chenelle, Esq.

Bank Refusal to Foreclose

Owners Remain Responsible

Ralph and Megan Canning's financial troubles took a turn for the worse in early 2009. Falling behind on their monthly mortgage payments, and denied in their attempts to refinance their mortgage, the Cannings were placed in foreclosure by their lender, Beneficial Mortgage Services ("Beneficial"). The Cannings thereafter filed a Chapter 7 Bankruptcy Petition in the District of Maine on March 5, 2009. According to their bankruptcy schedules, the mortgage loan balance was $186,521.00 with a value on the home of $130,000.00. It was also their stated intention to surrender their home through the bankruptcy process. The bankruptcy case was uneventful and the Cannings' Discharge was issued on June 3, 2009. It was months after the discharge of their debt that the problems began.

Beneficial began the volley by sending the Cannings a letter informing them that it had no intention of initiating or completing a foreclosure of their property, and that the Cannings were to remain owners of the property. Beneficial's letter also indicated that the Cannings would be responsible for the premises including the payment of real estate taxes, liability insurance, and maintenance of the property. Prior to the bankruptcy case, these costs were borne by Beneficial.

Interpreting this communication as a violation of the Automatic Stay and Discharge Order, the Debtors responded by demanding that Beneficial either foreclose on the property or release its lien, and that failure to abide by the demand would result in the filing of an adversary proceeding in the bankruptcy court. They further informed Beneficial that the property had been vacated, and the utilities shut off. Beneficial declined the invitation and restated that it would not

foreclose on the property "until the lien balance is satisfied in the amount of $186,324.15." It also suggested the option of a settlement or a short sale was available.

Refusal to Foreclose or Release Lien

The Cannings filed an adversary proceeding against Beneficial several months following the initial letter, seeking actual and punitive damages for Beneficial's "failure or refusal to commence foreclosure or otherwise recover possession of the residence." Beneficial denied all allegations, and stated that the estimated value of the property was then $75,000.00. The parties agreed to submit the issue of liability on the basis of a jointly filed Stipulation and Exhibits.

The Cannings relied on the case of Pratt vs. General Motors Acceptance Corp., 462 F.3d (1st Cir. 2006). That court found that General Motors' refusal to either reclaim its collateral or release its lien on an "inoperable, worthless car was intended to objectively coerce the debtor into paying a discharged debt." It was the Cannings' argument that the Pratt case was analogous to Beneficial's refusal to foreclose or release its lien on the Debtors' property. The bankruptcy court was not persuaded and found in favor of Beneficial, stating that the Canning case involved a piece of real estate that could appreciate over time as opposed to a worthless car. It further stated that Beneficial had provided alternatives to its refusal to foreclosure. As a postlude, the court offered:

"Of course, [Beneficial's] chosen course of action, or inaction, did not make things easy for the Cannings. Forces remained at work that could make their continued ownership of the real estate uncomfortable — forces like accruing real estate taxes and the desirability of maintaining liability insurance for the premises. But those forces are incidents of ownership. Though the Code provides debtors with a surrender option, it does not force creditors to assume ownership or take possession of collateral. And although the Code provides a discharge of personal liability for debt, it does not discharge the ongoing burdens of owning property."

Appeals Affirm Bankruptcy Court Judgment

The Cannings filed a timely appeal with the Bankruptcy Appellant Panel ("BAP"), which found that the Cannings failed to introduce any evidence

showing that they had actual expenses arising from the continued ownership of the residence but instead "rested their case on the mere possibility that liabilities could arise in the future." The BAP further found that there were dispositive distinctions between the Canning and Pratt cases and that it was unable to conclude "that there was a particular confluence of circumstances that renders Beneficial's refusal to discharge its mortgage tantamount to coercing the payment of a discharged, prepetition debt." The Cannings then appealed to the 1st Circuit Court of Appeals (the "Appeals Court").

Foremost within the Cannings' argument was the Fresh Start Doctrine premised under 11 U.S.C. §524(a), which sets forth the automatic stay against collections of debt already discharged. The Court found that although this doctrine is broadly interpreted, it does not prohibit a secured creditor from recovering its collateral on valid prepetition liens, which unless modified, "ride through" bankruptcy unaffected and enforceable under applicable state law. Conversely, the secured creditor has the "prerogative to decide whether to accept or reject the surrendered collateral." Alternatively stated, although the Cannings had the right to surrender their residence through the bankruptcy process, there is nothing in the bankruptcy code that requires a secured creditor to accept it. However, the secured creditor's decision must not guise to coerce payment of a discharged debt. In the Canning case, the Appeals Court found no such activity.

Similar to the statements of the BAP, the Appeals Court further found that "there is nothing in the record … to evidence any expenses related to the [Cannings' continued] equitable ownership other than the … reference in their brief to being exposed to liability." Ultimately the Appeals Court found no similarities between the worthless automobile in the Pratt case and the Cannings' residence.

In affirming the bankruptcy court's judgment, the Appeals Court warned that its decision should not be relied upon to leverage a way out from negotiating in good faith, and stated that: "while this case may provide some guidance on the dos and don'ts applicable to the bargaining dynamics between secured creditors and bankruptcy debtors, our remarks in Pratt still control: the line between forceful negotiations and improper coercion is not always easy to delineate, and each case must therefore be assessed in the context of its particular facts."

Although this decision was issued based on an Order of the Bankruptcy Court in the District of Maine, it is a federal decision that has far reaching implications, specifically in those districts that fall under the jurisdiction of the United States Court of Appeals for the First Circuit. Those Districts are the Districts of Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island. This decision filtering down to the state level is only a matter of time. CM

David R. Chenelle is an attorney with the law firm of Perkins & Anctil, P.C.

by Nena Groskind

A Bright FUTURE

Solar Power Is Growing Quickly but Condominiums Aren't Lining Up for it — Yet

Solar power, long viewed as a dream by supporters and a fantasy by skeptics, is fast becoming a reality. Solar panels seem to be sprouting like spring flowers on residential and commercial rooftops all over the country.

The numbers are impressive. Solar installations of all kinds added 3,200 megawatts of power in the United States last year, a 70 percent increase over the year before. Solar costs meanwhile have declined by 30 percent in the last two years alone, according to industry reports, reducing the average cost for residential solar PV (photovoltaic) systems from about $9 per watt in 2006 to $5.46 per watt last year.

As a result, "solar is booming," asserts David Abel, CMCA, senior manager with First Realty Management Corporation, who thinks solar "should be on the radar screen" for virtually every condominium community. In fact, however, it doesn't register at all for most of them. For Abel, a fervent believer in the need to reduce reliance on fossil fuels, it is frustrating but not particularly surprising to find condominiums "last in line" for solar applications.

The volunteers serving on condominium boards, he notes, tend to be cautious, risk averse, and financially conservative. With their primary focus on controlling costs, many boards (and condominium owners generally) lack the long-term "spend money to save it" investor mentality that big-ticket expenditures on energy conservation initiatives often require. And solar installations fall clearly into the "big ticket" category.

Costs vary widely, depending on the location and the type of system. But, just to provide a frame of reference, the installation for a 70-unit cooperative in New York City cost about $250,000; the installation cost for a 200-unit community in Denver was about $420,000.

Multiple Incentives, but....

An array of federal, state, and local incentives available in many areas can substantially reduce those up-front costs. The most powerful of these incentives by far is a federal income tax credit equaling 30 percent of the cost of installing a solar energy system. That's a credit, deducted from the taxes owed, not a deduction, which simply reduces the income on which taxes are calculated. The credit is available for systems installed between Jan. 1, 2009 and Dec. 31, 2016. A homeowner who installs a $20,000 system could subtract 30 percent of its cost — $6,000 — from his or her federal income tax bill for the year. That's a powerful incentive and it goes a long way toward explaining why solar has been gaining ground. Unfortunately, this incentive has thus far proven to be largely inaccessible to condominiums.

Many condominiums, and virtually all of them in New England, are structured as non-profit entities. Because they don't pay taxes, they can't claim that very attractive federal tax credit. A community association could theoretically distribute the credit to owners based on their percentage interests, but the operative word is "theoretically." Because a solar energy installation is an improvement, a super-majority of owners must approve it.

Setting aside for a moment the difficulty in getting a large majority of owners to agree on anything, up to and sometimes including the time of day, there is the perplexing question of who benefits. While owners can claim the credit for a primary residence or a second home, they can't claim it for an investment property. Excluded from the tax break that substantially reduces the up-front costs of a solar installation, investor owners have little incentive to support it, making solar projects pretty much a non-starter except in communities that are 100 percent owner-occupied.

"The truth is, none of us on either the solar or the condominium side of this can figure out a good pathway to do anything significant with the federal tax incentives [in condominiums], and I've been in the room with some pretty bright folks trying to tackle it," Luke Hinkle, president of My Generation Energy, Inc., explained in an e-mail explaining why he couldn't add much to a discussion of solar applications in condominiums. "Without being able to take advantage of the tax benefits," he noted, "it's hard to justify."

A Solution for Condominiums?

Abel thinks institutional investors and Massachusetts policy makers may have created the elusive "pathway" for condominiums to which Hinkle referred. The idea — and Abel emphasizes that it is still a new idea — is that investors will finance the solar installations and lease them to the community association. This eliminates the up-front investment cost for the condominium and the need to persuade owners to approve it. Institutional investors, with large amounts of capital to deploy, get the tax credit and the accelerated depreciation, providing the stable return they want. The community association gets lower energy costs and the solar renewal energy credits (SRECs) that Massachusetts and some other states offer to encourage the development of solar energy and help support the market for it.

Under the Massachusetts program, for every 1,000 kW hours a solar system generates, the owner gets one credit. A third-party broker tracks the credits for owners and auctions them periodically to the utility companies. The state requires the utilities to purchase a minimum number of these credits annually and penalizes them (currently at $500 per credit) for any shortfall. To illustrate, using simple numbers, if the minimum purchase requirement is 1,000 credits and a utility purchases only 900, the utility would have to pay a penalty to the state of $50,000 ($500 x 100) for the 100 credits it failed to purchase. Until these guidelines change, Abel notes, and they will eventually, utilities have an incentive

to pay at least $500 per credit creating an attractive financial "bonus" for owners.

Under earlier solar financing structures that turned out not to work well for condominiums, a third party (usually a solar company) would build and own the solar equipment and sell the electricity to the condominium under a "power purchase agreement." The solar provider would also claim the SRECs. One advantage of the new model, Abel says, is that the SRECs go to the community association, which can use the income to offset operating costs.

What had been a complicated arrangement for associations becomes both simpler and more appealing, Abel says. "The only questions for the board are, 'Do we believe the numbers, and do we think this a fair deal?'" Abel is convinced that leases will be "the solution" for condominiums. "We're very excited about this," he says. "As long as the company doing the leasing is making money, the laws of physics will apply — this is going to happen. It's just a matter of consciousness raising — getting condominium owners to understand what they can do and what they will get."

Residents of Remington Post, a 200-plus unit development in Denver, expect to tally more than $300,000 in energy savings over the next 20 years.

Abel says his company is in the process of reviewing all the properties it manages to identify candidates for solar leasing. "We know many of them will have one problem or another," he notes. But there will be some in which "the numbers look really compelling, and we're going to push those hard."

The Problems with Roofs

The leasing model that Abel described eliminates what has been a major barrier to solar entry for condominiums by providing relatively easy access to financial incentives. But there are other impediments. Solar installations require sun (of course), which means buildings must have a southern exposure and enough roof space to accommodate the number of solar panels needed to generate the amount of electricity required. The industry rule of thumb is between 100 and 150 feet of unencumbered roof area for every kW of system capacity. (As a benchmark, a typical one-bedroom unit requires between 4,000 and 4,500 kW hours of energy per year.)

The roof requirements eliminate "all those lovely, tall, downtown condominium buildings," notes Steven Dannin, CMCA, AMS, PCAM, president of Dannin Management Corp. A building his company manages in Brookline "really wanted to do [solar]," he says, "but it just wouldn't work."

The roof doesn't just have to be large — it also has to be in good condition. Five years old or less is considered optimal. Installing solar on an older roof that will have to be replaced or substantially repaired won't be cost-effective, to say the least, because the solar panels will also have to be removed and re-installed.

For association boards already concerned about the cost of going solar, the additional cost of replacing the roof can be a deal-breaker. "How can you increase the cost by 30 percent or 40 percent or more and expect to keep owners happy?" Dannin asks, especially when the per-unit reductions in energy costs aren't all that dramatic. In a 50-unit association, he notes, the per-unit share of a $10,000 electric bill would be $200 per year or about $17 per month. "Even if you save 10 percent

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or 20 percent by going solar, owners aren't going to be very excited."

The opportunity to convert to a "green" energy source may appeal to some owners, but Abel concedes, it won't "engage" the majority of them, who are concerned primarily about controlling their costs. However, he thinks a persuasive argument can be made for replacing a roof as part of a solar conversion project, even if it still has a few years of useful life remaining. If the roof is 15 years old, he notes, "you've depreciated two-thirds of its value already," and it will have to be replaced in a few years anyway. By replacing it now, the community can capitalize on current solar incentives (which may be reduced or eliminated in the future) and begin accumulating the savings from lower energy costs as well.

Solar Role Models

Abel and other solar proponents can point to many condominium and cooperative communities in other areas that have converted to solar and been happy, even ecstatic, with that decision. "It's embarrassing how much money we save," Jack Fogle, manager of a New York City co-op, notes in a recent article in *Habitat* magazine. He estimates that the 14,000 square feet of solar panels the community installed two years ago are shaving $15,000 annually off of its utility bill. The installation cost about $418,000, but a combination of federal, state, and local tax incentives and a few large grants reduced the co-op's up-front costs to less than $34,000. "We hit a real sweet spot," Fogle told *Habitat*. "The numbers really started to work for us."

Residents of Remington Post, a 200-plus unit development sprawled across 17 acres in Denver, Colo., expect to tally more than $300,000 in energy savings over the next 20 years. But the savings aren't the only selling point, a press release describing the initiative emphasized. The conversion to solar also sends a positive "green" message. "We're demonstrating [to residents of our community and others] what this technology can achieve."

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If Abel is right about the potential for the new financing structure he describes in this article, more condominium communities in Massachusetts may begin to view solar as a viable and appealing option as well. The limited roof space that disqualifies many communities won't create the same barrier for townhome-style developments, many of which have thousands of feet of roof space available across multiple buildings. Even if owners in those communities won't approve solar as a common-area expense, individual owners, who would qualify for the federal and state incentives available to single-family owners, might consider installations for their units alone.

"I'm shocked that more owners haven't said they want to do this," Abel says.

Can't Say No

It may be that owners assume they would not be able to install solar equipment on common-area space they don't control. Although that could be an obstacle in many states, more than a dozen, including Massachusetts, Maine, and Vermont, have enacted laws prohibiting regulations that bar solar installations. Operating much like the federal laws mandating access to telecommunications equipment, the solar laws:

- Require community associations to approve the easements owners need to install solar equipment in common areas, but;
- Allow them to establish reasonable requirements (governing the location and design of the equipment and ensuring its safety), as long as the requirements do not significantly increase the cost of the installations or reduce their efficiency.

There are other issues condominium owners and associations should consider when they are contemplating the solar option. Maintenance is one of them. Solar companies typically guarantee their panels for 20-25 years and describe them as essentially maintenance-free. "Once they are plugged in, the sun takes over and [the system] is good to go," a California community association manager enthused recently in his blog.

Abel decided to test that theory on the panels on his house by washing one set of pollen-covered inverters but not another one. He found "no difference at all" in their production after the cleaning — both were performing at maximum capacity. "Maintenance is basically zero," he says.

Ralph Noblin, PE, owner of a consulting engineering firm (Noblin & Associates) that works extensively with condominium communities, is skeptical. "I'm in the age and infrastructure and maintenance business," he says. "And nothing runs forever without issues." He has seen many examples

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over the years of materials and structures that were marketed as virtually indestructible but fell far short of those promises. He cites the solar hot water systems installed on rooftops at the height of the 1980s energy panic as a case in point. They were supposed to last at least 20 years, Noblin says, but "many were rotting and becoming detached" after 10 years or less. "The durability wasn't what was expected."

Blowing in the Wind?

One of his major concerns about the durability of solar systems is their resistance to wind. Their weight may not be enough to anchor them firmly to the roof, Noblin worries. "If another Hurricane Sandy blows through," he asks, "are we going to be picking solar panels up off the street?"

Abel doesn't share those concerns. With proper engineering ensuring that the roof is sound and the panels are properly attached, he says, wind shouldn't be a problem. "If the panels go, my roof is going too."

For Noblin, who has seen more than a few roofs buckle under strong winds, that may not be entirely reassuring. But structural issues aside, he thinks the real question about solar, and the key to its future, is whether it will prove to be cost-effective over time. The baskets of tax and other incentives that make solar financially viable for many property owners today (and may make it viable for condominiums) will disappear over time, Noblin notes, and when they do, the cost-benefit balance may look very different. At this point, he thinks, solar "may be largely a feel-good exercise that hasn't yet become an energy-saver for the environment."

Abel thinks the cost saving and environmental protection benefits of solar actually have been demonstrated and will become more obvious in the future as energy costs rise and as environmental concerns grow. No single alternative energy source alone, including solar, will address those costs and concerns, he emphasizes, noting, "We consume way too much energy. Unless we reduce consumption, solar will be useless."

But in an energy puzzle that has many pieces, Abel is convinced that solar will be one of the largest. "It will happen because it has to," he insists. The only question in his mind is whether solar will come "sooner and smarter," because people recognize the environmental need and the energy benefits, or later, "under duress," because rising energy costs, depleted resources, and environmental damage leave no alternative. On that question, Abel is both hopeful and realistic, which makes him uncertain of the answer.

"We'll see," he says. CM

Nena Groskind is president of eContentplus, providing editorial content for websites, print and electronic newsletters, and magazines.

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Full-Service Legal Representation for New Hampshire & Massachusetts

by Pamela Schweppe

Suppose you are a property manager or trustee for an association in the ski resort area of the White Mountains of New Hampshire. One of your unit owners has a vacation unit in your complex but a permanent residence in Massachusetts. And this unit owner has decided to sue you — not in New Hampshire, where you are located, but in Massachusetts. What do you do?

For one association, the answer was to turn to Feniger & Uliasz, LLP. Headquartered in a beautifully restored Victorian building in Manchester, N.H., the law firm appears to be the quintessence of small-city New England. But make no mistake. They are fully equipped to go head to head with any high-powered Boston law firm.

That's exactly what they did in the case of the vacation resort complex. "There are dramatic differences between New Hampshire and Massachusetts, not only in their condominium statutes, but also in the way the court systems function," says Michael Feniger, a named partner of the firm. "Having an intimate knowledge of the legal system in both states is very important, because litigation often crosses state lines in the world of condominium ownership, particularly in New England where states are small and borders close. Because we're comfortable with the legal system in both states, we were able to get the case dismissed for lack of jurisdiction."

Good Old Yankee Ingenuity

The firm maintains satellite offices in North Andover, Mass., and Dover, N.H., and that dual-state expertise is a huge benefit for the clients they represent. Because the attorneys of Feniger & Uliasz are licensed in both states, they don't have to refer cases from one state to another, which means they're already familiar with the associations they represent, as well as their property managers and board members. And they're also well versed in the various courts — District, Superior, Federal, and Appellate — in both states.

And what a complex specialty condominium law has become! "A condominium association is a microcosm of any city or town in one little package," Feniger explains. "It's trying to govern itself within a set of rules and with all the same problems a government has, but at a microscopic level. It's fascinating!" To keep up, the staff of Feniger & Uliasz stays on top of a variety of functions, from real estate and commercial law to environmental and financial issues.

One client who appreciates that comprehensive level of expertise is David Rogers, treasurer of St. Mary's Condominiums in Hooksett, N.H. An attorney himself, Rogers also serves as a hearing officer for the New Hampshire Department of Labor and appreciates the value of a diversified skillset.

Like other associations, St. Mary's has faced a number of legal issues over the years, ranging from personal injury and litigation to unit owner bankruptcy and collections. Rather than working with different lawyers on different kinds of cases, the board decided to consolidate their legal representation under one New England roof. The firm they chose was Feniger & Uliasz.

As an attorney, Rogers serves as the board's liaison with the firm, and he is impressed by the way the attorneys of Feniger & Uliasz communicate not only with someone like him, who understands legal terminology, but also with the rest of the association. "They cut to the chase," he says. "We're very pleased with their service."

Exceptional Financial Expertise

Another client who relies on Feniger & Uliasz in a variety of areas of expertise is Thomas Ducharme, president of Evergreen Management of Bedford, N.H., who is especially impressed by Feniger & Uliasz's attention to detail — for example, in the matter of collection. "Say an attorney is supposed to send out the 30-day collection notice," he says. "You check with the guys at Feniger & Uliasz, and five days after the 30 days, they're filing a court appearance. With some other attorneys, you have to follow up and remind them. Over the years, Feniger & Uliasz has kept up with their promises in terms of performance."

Financial issues, including collections, are a particular area of expertise for Feniger & Uliasz. At the start of his career, Feniger worked for Travelers' Insurance Company, principally in Massachusetts. "Insurance is a big issue in the world of condominiums," he says. "Knowledge of coverage and claims management is vital in addressing the coordination of benefits between unit owner and association policies when a loss occurs."

The firm also has in-depth knowledge of financing regarding condominiums. "We know how to help associations get financing for renovations, repairs, and improvements other than through special assessments, which are often painful to unit owners," Feniger says.

He points out further that, when banks or other lenders are going to lend money, they need to be sure there's someone with the authority to bind the association

— and that can be a problem if the association hasn't kept up with the formalities and filed the proper documents. A case in point is an association that has not been in compliance with state law for years, an issue that didn't surface until the board wanted to make improvements that required a significant loan. "The lender contacted them and said, 'Who has the authority? Where is the documentation?'" Feniger reveals. When Feniger & Uliasz was brought in, they had to sort through years of paperwork to get the association back on track. "Most of the time it goes smoothly because we know exactly what the lenders need, and we can help put together the package before the application is even sent," Feniger says. "That comes from our experience. We have a good sense of how to accomplish what the associations need."

Bankruptcy is another area where Feniger & Uliasz excels. Because the attorneys appear in the Bankruptcy Court on a regular basis and have electronic access to the system that tracks bankruptcy filings, they are able to help their clients avoid potential pitfalls, including heavy fines that can be imposed by the court should an association initiate a collection activity against a unit owner who has filed bankruptcy — even if the bankruptcy notice is sent to the wrong address, as happened to one association in Feniger's experience. Similarly, the familiarity of Feniger & Uliasz with the rules regarding foreclosure enables them to collect debts other firms might overlook.

Another complex area for associations that Feniger & Uliasz is frequently called on to resolve is issues involving landlord and tenant laws. For example, their staff can perform the title abstracting and title research necessary to identify the actual owner of the unit — which is not always who it might appear to be. "Sometimes people living in the unit may appear to be the owner, but they own it as a trust or LLC, or they may be a tenant," Feniger says. "You have to know who's obligated to pay before you file suit. Otherwise, you're wasting the association's time and money."

Yankee Thrift

Helping clients minimize their legal expenses is another area where the efficiency and expertise of Feniger & Uliasz are appreciated by their association clients. "Most complaints about lawyers' fees come from people dealing with the cost of legal representation after the problem arises and not dealing with a situation prospectively. They wait for something to happen and say, 'Oh boy, how are we going to fix this?'" Feniger says. "That becomes much more expensive than it would have been had they dealt with it at the outset."

To help increase efficiency and reduce expenses, Feniger & Uliasz acts proactively, to help avoid problems before they evolve into severe financial stress or even receivership. "Our bills are a lot less than the alternative," says Feniger. "We're strong on making sure everything's in compliance."

A major aspect of Feniger & Uliasz's proactive approach is the emphasis it places on open communication with client associations at the first sign of a problem. The firm has found that this open communication with associations and management companies resolves many problems more efficiently than litigation — or avoids it altogether.

They're also strong on keeping property managers and association boards up to date on their legal affairs. "It's not unusual in the late afternoon to get a call from a property manager on the way to a board meeting and in need of an update," says Feniger. "The way we organize files and the spreadsheets we've developed allow us to provide the information that they need in a matter of seconds. That helps them out a lot."

The attorneys of Feniger & Uliasz bring a wealth of knowledge and experience in all facets of condominium law to their practice and are eager to share it with you. Shown from left: Michael Feniger, Gregory Uliasz, Kat Marquis, and Ellen Rogers.

Perhaps the real secret to the firm's success, however, is something more intangible: a sincere love of their job. "We have a strong group of dedicated and experienced attorneys and a great support staff," Feniger says. "We enjoy what we do, and everyone in the office shows up smiling and is happy to talk to you. I think that makes a big difference."

For more information about how your association can benefit from Feniger & Uliasz's expertise, call (603) 627-5997, or visit www.fenigeranduliasz.com.

by Allan Samuels, LEED AP

Efficient AND Effective

How Community Associations Can Jump on the Green Bandwagon

Everyone wants to go green, save energy, and cut their carbon footprint. Individuals can do so by recycling shopping bags, cans, and clothes, by reducing their use of heating, air conditioning, and lighting, and by driving a hybrid car, taking public transportation, or bicycling. Although community associations do not have all of the same energy-saving options as individuals, there are still many ways associations can jump on this green bandwagon.

Communities, whether condominium, townhome, or homeowner associations, have the unique ability to drastically reduce energy use because these organizations can go green on a larger scale than individual homeowners. Unlike individual owners, associations are responsible for the entire site as well as any common elements such as pools, clubhouses, and shared mechanical equipment. When switching to more energy efficient lighting, for example, an association can replace the bulbs in all shared hallways, each common area building, and every site light on the property, whereas a homeowner can only replace a handful of bulbs within their home. With so much opportunity for greening, the energy savings for associations can certainly add up.

Energy Savings Through Mechanical Equipment

One of the most significant opportunities for associations to go green is by upgrading mechanical equipment to more efficient systems with improved controls. For example, upgrading to a more efficient furnace can yield a rapid payback with thousands of dollars in savings over the life of the equipment. Today, boiler systems can achieve efficiencies as high as 97 percent, converting nearly all the fuel to useful heat. Replacing a property's boiler can also cut pollution output in half, not to mention the association's fuel bills and maintenance costs.

For further greening in the area of mechanical equipment, associations can invest in programmable controls. This technology allows the association to adjust the times and settings of the heating and/or air conditioning in common area buildings according to a pre-set schedule, outdoor temperature, and the anticipated performance of the building. As a result, the equipment can be set to operate only when necessary and at the peak efficiency. In winter, lowering the temperature of a clubhouse or common area during non-open hours or when residents are sleeping can reduce utility bills by 5-15 percent. In addition, ongoing remote monitoring of the mechanical systems will detect any abnormalities that can then be corrected in real time. In short, improving the performance of an HVAC system and implementing efficient controls on a common system can yield savings of hundreds of thousands of dollars.

Energy Savings Through Lighting Solutions

Another method for associations to go green is to switch to a more efficient lighting system. Compact fluorescent light (CFL) bulbs use 75 percent less energy than incandescent bulbs and last 6-12 times longer. Experts agree that replacing regular lights with CFLs can be the cheapest and most effective way to cut energy usage immediately. According to the EnergyStar online calculator, the energy savings from replacing just one 13-watt incandescent light used only four hours a day would render a payback of between three and eight months. Now imagine the energy savings that would be realized after switching to CFL bulbs throughout an entire community. Even more efficient than CFLs are Light Emitting Diodes (LEDs). LED fixtures make great outdoor lighting for parking lots and walkways, a crucial component of most associations. As prices for LEDs

continue to decline, these fixtures offer an increasingly attractive alternate to incandescent lights and CFLs.

For further savings in lighting, associations can invest in motion sensors and controls. Motion sensors automatically turn off lights when a room or area is not occupied. Controls are capable of dimming the lighting based on the time of day and available natural light. This technology is especially useful when installed on outdoor lights, but can produce significant savings in clubhouses and common hallways.

Reducing Energy Waste

In addition to using equipment that uses less energy, associations can go green by reducing energy loss/waste. Communities can reduce energy loss by increasing building insulation, sealing air leaks, and weatherproofing windows. Although they cannot make these changes within individual units, associations can use these methods for making their clubhouses and other common areas green. Properly insulating attics and wall spaces can reduce the amount of heat escaping from the building and save significantly on heating and cooling costs. Sealing air leaks means filling in the gaps around windows, doors, and air ducts so that heat cannot escape in cold months and cool air is not lost in summer months. Sealing air leaks will reduce drafts, make the building more comfortable for the occupants, and can result in energy savings of 5-30 percent per year.

Windows are one of the largest sources of heat loss because of their low insulating ability and high air leakage rates. Likewise, in summer, windows are a major source of unwanted solar heat gain. In some cases, windows are responsible for up to 50 percent of the property's heating and cooling energy costs. An association can retrofit single-glazed for double-glazed low E windows, which can cut heat loss and gain in half. Another option is to invest in window shades, such as blinds, shades, and curtains. These shades block sunlight, reducing the need for air conditioning in the summer, and serve as added insulation against outside temperatures in winter.

Renewable Energy

Lastly, community associations can go green by investing in a renewable energy source such as solar paneling, geothermal heat pumps, or wind turbines. Federal, state, and local rebates have made renewable energy sources a viable option with reasonable payback periods. Photo voltaic has become especially practical, as there are opportunities to lease solar panels rather than purchasing this expensive equipment outright.

Going green is often viewed as an idealistic and expensive endeavor. However, these cost effective methods of reducing your carbon footprint illustrate how easy and inexpensive going green can be. To top it off, going green can drastically decrease an association's annual expenditures, often saving thousands of dollars over the life of the energy-efficient equipment. CM

Allan Samuels, LEED AP is managing partner of Energy Squared, LLC, a sister company of Kipcon Inc.

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FROM START

by Ed Hofeller and
Mark Sheingold

TO FINISH

Successful Maintenance Programs

Running an effective maintenance program is a key part of a property manager's job. Unfortunately, in today's world, people are being asked to do more and more, so there is often just not enough time to run the program as well as one would like.

Maintenance Software Can Help

Here are a few things that property management maintenance software can do:

- Create work orders.
- Formulate the costs of parts and labor.
- Record information about calls.
- Keep a detailed maintenance history.
- Create a report about the maintenance budget, the staffing, and how well the equipment works.
- Calculate how frequently equipment fails, and the average period between breakdowns.
- Tell you how long it takes to repair the equipment.
- Calculate the dates of equipment inspections and maintenance using its knowledge of the age and history of the equipment.
- Allow the technician to enter information into its database via their smartphone.
- Tell you if a repair or replacement is more cost effective using life cycle analysis.
- Keep track of how long it takes the technician to make the repair, and the average number of times it takes each technician to close the order.
- Track the number of repairs per technician, or if there is one technician, it can evaluate that technician's performance against an industry benchmark.
- Locate floors or sections of a building that have an unusual number of repairs.

Emergency Contact List and Schedules

One very important thing to have is an emergency contact list. The list should indicate whether the vendor is on a service contract or not. You will also want to include account numbers. It is a good idea to have back up vendors in case your main vendor is not available. You should also list the code numbers of the lock boxes and the location of the shut-off valves. In brief, any infor-

mation the vendor needs to do his job should be on that list.

This gets into the issue of relationships with vendors. You want to establish relationships where your vendor will take the 2 a.m. call and rush out to solve your problem. The manager is hired to have good vendors, and if they do not perform, the manager is responsible.

Ideally, your list should be on the company server and in your and other employees' smartphones, and there should also be a hard copy in case of technical problems. It goes without saying that this list should be assiduously kept up to date as information changes. Moreover, it is important to have a manager who is on call, 24/7. That way, the person taking the call at 2 a.m. will have a good understanding of the issue and how to resolve it.

Detailed schedules are very important so that all parties (managers, in-house service personnel, and vendors) know exactly what is expected of them. Not all property managers have the expertise to know how to schedule technical work. If that is the case, you can ask a few vendors what they recommend and figure it out that way. You can also look at the manufacturer's recommendations to get this information.

Routine Maintenance

The main reason for routine maintenance is to identify possible problems before they become serious problems. The property manager should create schedules of what routine maintenance should be done on what dates. Examples of this would be having the elevator service company do routine checks of the system, or checking the condition of the roof. By catching a small problem on the roof early, you could prevent a major leak that would damage units below. Much of routine maintenance should be done on the schedule recommended by the equipment manufacturer. Records should be kept of this. This will protect the association from a manufacturer refusing to honor a warrantee because the correct inspections were not done. This will also help you if an insurance claim needs to be made.

Preventative and Predictive Maintenance

Preventative maintenance is the next step beyond routine maintenance. It consists of performing regular tasks to keep your building running smoothly. For example, lubricating machines can prevent them from failing, and cleaning out your dryer vents can prevent a fire. Records of these tasks also should be kept for the same reasons as are mentioned above.

Predictive maintenance is a part of preventative maintenance. It consists of

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looking at the useful life of the different parts of the physical plant, factoring in what has been found in inspections and what maintenance has been done. You then decide if a part of the physical plant should be replaced before it breaks. There are different opinions about predictive maintenance. Some people think that predictive maintenance is a great thing, since you can modernize an elevator before your current elevator breaks, and you find out that the part you need to fix it is no longer made. On the other hand, you could replace a roof with a useful life of 20 years in the 19th year, when the roof could have lasted 30 years. Another way to implement predictive maintenance is to do a capital needs study, or a replacement reserve study. This means that you hire an engineering consulting firm to tell you the condition of the physical plant and to give you recommendations. The downside of this is that once the report is made, if something breaks that was on your report that was recommended to be replaced, or repaired, you are liable. It sounds intuitive that if something is on the report, you should follow the recommendations. However, situations could occur where something is recommended to be replaced in one year, but due to financial limitations, you budget it to be replaced in two years and it ends up failing in 18 months. Predictive maintenance is generally not used in the condominium management industry, but is more often used by companies that own portfolios of large buildings.

Corrective Repairs

The final aspect of a maintenance program is corrective repairs. You must be careful about certain things when having items repaired. If it is covered under a warrantee, you should take advantage of that. If you have a service contract, is there an extra charge for the repair? If there is a service contract, and there is a charge for the repair, can you have another vendor or your in-house staff do the repair without voiding the service contract? Are you better off replacing or repairing the item?

Also, dealing with vendors is not always easy. You want to be very careful about what the contract says. At times, an attorney should review the contract. You also want to make sure the contactor has the appropriate licenses and insurance certificates. Finally, you want to make sure that full payment is not made until the work is complete and you have gone through a punch list. CM

Ed Hofeller is the founder and president of Hofeller Management. He has an MBA degree and an AMS designation from CAI. Mark Sheingold is currently working at Hofeller Management as an assistant property manager and has obtained his CPM, RPA, and CPO designations.

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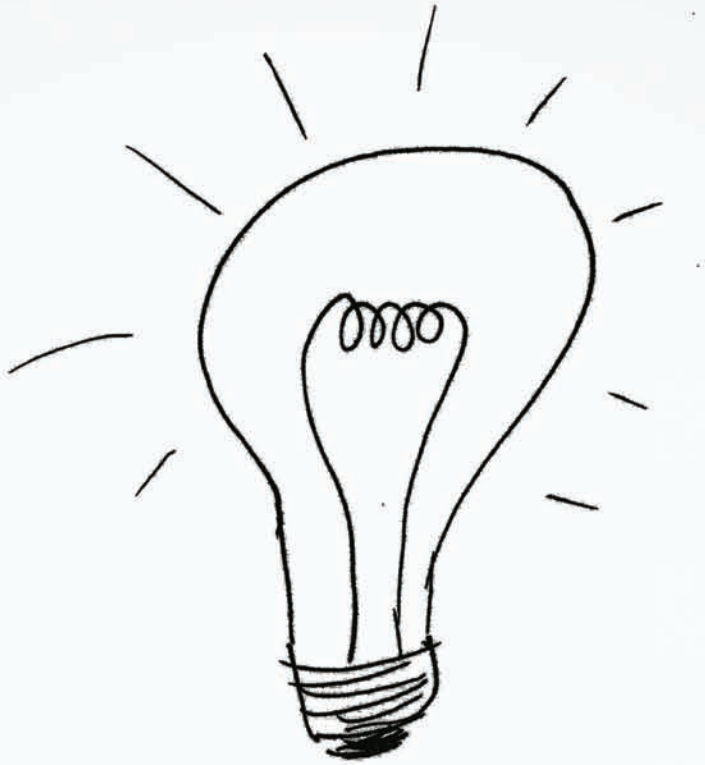

by Barbara Reilly

Steps to Enlightenment

Musings and Misadventures of a Condo Owner

This is it, I thought, *the start of a great adventure*! The kids were raised, educated, and launched, so now seemed to be the perfect time for a change. I had been considering downsizing from a large home in the suburbs to something smaller. Since I was no longer concerned with the quality of the school district, I felt free to try something different. In my case, that meant a move to the city. At the time (and in my naiveté, I now realize), the benefits of condominium ownership seemed legion compared to home ownership.

My building is in a prime location convenient to shopping, restaurants, and theaters. With gasoline costs escalating, I was excited about my reduced dependence on my car for getting around. My friends asked whether or not I was anxious about the safety and security of my location but, surprisingly, I felt even safer. The close proximity of neighbors within the building and a state-of-the-art security system in the building were reassuring.

Most important to me, however, were the "services" that came with the ownership package. No more yard care, snow shoveling, or gutter maintenance for me. A management company would be taking care of all that. I had been given the name and number of the manager who was assigned to the care of our building. Imagine, my own personal concierge at my disposal! It just kept getting better and better. I realize now that I was in the first stage of true understanding of condominium ownership: blissful ignorance. It was wonderful (for as long as it lasted).

From Ignorance to Participation

I might have continued in this stage for a lot longer if I hadn't noticed a new note that was posted in the mailroom. "Board Meeting: Thursday, 7 p.m. in unit 3A. All welcome." I mistakenly thought it was the annual meeting of homeowners and I felt it was my civic duty to attend. Perhaps my innate nosiness about what was going on around the building caused me to attend. I knocked on the door to 3A shortly after 7 p.m. and was surprised to find that there were only four other people in attendance (there are 24 residential units in our building). Four pairs of glittering eyes sized me up quickly and decided that this chump would do nicely to fill a vacancy on the board. And just like that … I was snared! I was voted in as a member of the board. *Oh well*, I told myself philosophically, *I guess it's only right that I help out a little.*

After my initial dazedness, I relaxed a bit. The president of the board (my upstairs neighbor) seemed to have the meeting under control and I just followed along with the agenda. At this point, the whole business seemed to me to be quite benign and undemanding. And so it was that I entered the second stage of condo ownership: participation. For me this meant being on the board but letting the president do it all. I just had to show up for meetings, give my opinion when needed, and vote. I could also pick up a few titillating bits of gossip (who was in arrears on their condo fees, who had violated what rules, etc.). If I had had any idea of the actual fiduciary and legal responsibilities of board membership, I would not have been able to sleep at night. That old saying, "ignorance is bliss," was certainly true here. When I look back on it, this is not something I am proud of.

This stage, being not at all unpleasant, lasted for two years or so until our president, anticipating the birth of twins, announced that he was moving to a new home. Thankfully, one of the other board members stepped in to take his place. Although an affable chap, this person had absolutely *no idea* of how to conduct a meeting. At the first board meeting he was to chair, I was the first to arrive and asked for a copy of the agenda. He informed me that he didn't think there was any need for an agenda and we would just "wing it." This is when I knew we were

in trouble. Sure enough, our meeting lasted for two hours and nothing was really accomplished. This leadership couldn't and didn't last. After a short time, he resigned amid general dissatisfaction from the other owners. I was the secretary at this point and there was no vice president. Because I was the next ranking officer, I became president of the board. I neither expected nor appreciated the promotion. I can assure you that there was a great deal of kicking and screaming (albeit in private) on my part at this point.

Education a Critical Component

Phase three for me was critical. I needed some personal education (an alternative to "sinking" in the "sink or swim" cliché). I was given a copy of our long-term study and an additional copy of the condo documents. That's it. No files, no nothing. At this point you might be wondering where the manager fit into all of this. *That*, my friends, will be the storyline for a future article.

Fortunately, because I am retired, I had the time to devote to coping with my new situation. The very first thing I did was to sit down and read, word for word and cover to cover, the condominium documents. It's embarrassing to admit that this was the first time I had ever given their existence much thought. But oh how very revealing they turned out to be. Not only had I, through my ignorance, broken many of the rules and regs, but their general lack of enforcement throughout the building was appalling. Also fascinating was the section devoted to the duties of the officers and members of the board of directors. Imagine me sitting there bug-eyed as I discovered what I had really gotten myself into! I honestly don't think most board members understand the legal and financial obligations for which they have volunteered; I know I didn't. But once I did, I was determined to do my best to carry out my responsibilities without incurring any lawsuits.

Understanding Condominium Ownership

It took the better part of my first year in office to finally enter that final stage of condominium ownership: understanding. I didn't know where to turn for more information. Luckily, a friend and member of another association suggested I check out the website of an organization called CAI (Community Associations Institute). I did, and it was, for me, the path to enlightenment. When I saw the wealth of information available to its members, I immediately signed on. I started receiving magazines and announcements of upcoming conferences and workshops sponsored by our local offshoot, CAI New England. I made it a point to attend as many as I could. It took some time, but it was time well spent as I met wonderful and informed

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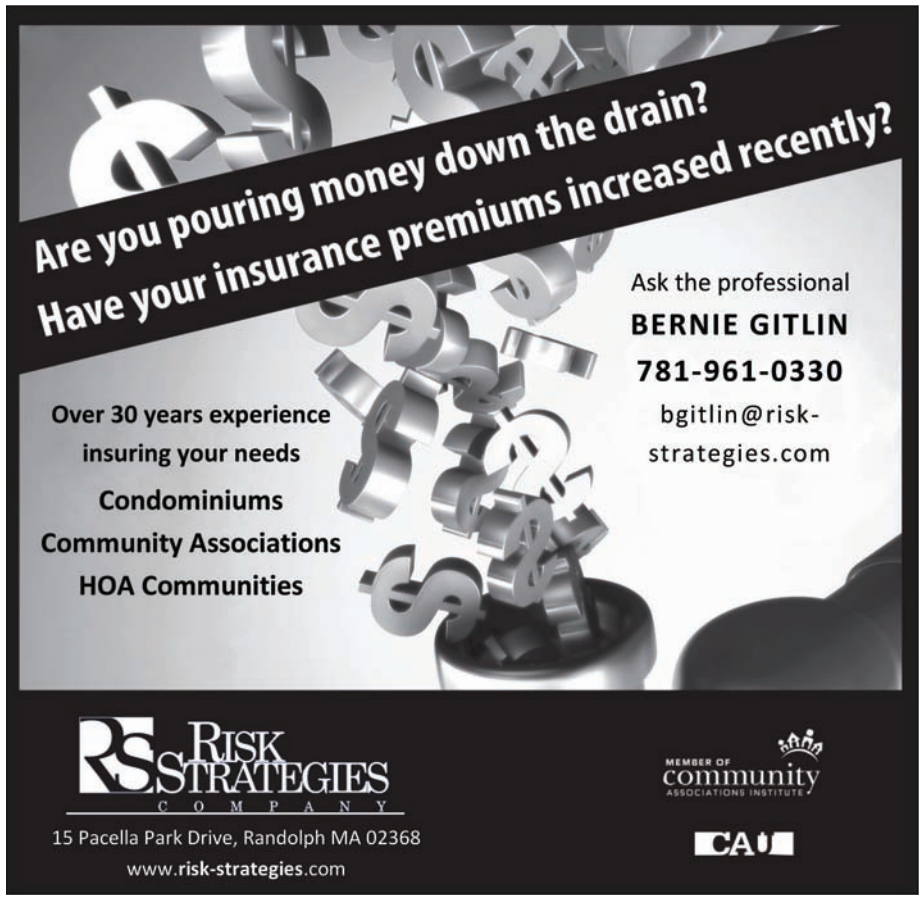
new contacts. At one presentation, I was awed by the depth of knowledge of an attorney member of a discussion panel. He is, today, our legal representative and his advice has been invaluable. It didn't take very long to make the decision to switch to another management company. Thankfully, through CAI-NE, we had several candidates from which to choose.

I also spent some time with *Robert's Rules of Order* in the hope of maximizing our productivity at board meetings. Gone were casual get-togethers and opportunities to socialize. Instead, I insisted that each board member receive, one week prior to each meeting, a "packet" of information. This packet contained a report from both the president (presenting what motions would be proposed at the meeting and my personal opinion of the merits of such motions) and the manager (current budget, maintenance updates, and recommendations). In this way, all board members were prepared to make enlightened decisions when they arrived. Discussions were focused and our meeting time was reduced to approximately one half-hour. It was a much more productive use of everyone's time.

I look back now and realize that, for me, experiencing those stages (ignorance, participation, education, understanding) was necessary. It was the journey that needed to take place to bring me to where I am today.

At the beginning of this narrative, I enumerated some of the advantages associated with condominium ownership. As I learned, and you probably have too by now, there are also some disadvantages. In subsequent brief articles, I will share some of my experiences as a condominium owner and how these negatives can be minimized. Perhaps you would like to share some of your insights as well?

Barbara Reilly is the immediate past president of The Conrad Condominium Association in Providence, R.I. A longstanding CAI homeowner member, she was elected to a three-year CAI-NE Board term commencing in 2013.



by Patricia Brawley, CMCA, AMS, PCAM

Adventures in Self-Management

Governance — The People Problem

It is 7 p.m. on the third Tuesday of the month and the board of the Greenway Condominium, a self-managed association, is calling the monthly open trustee meeting to order. It is the "owner input" part of the meeting and Mr. Brown immediately stands to be recognized by the board president, Tom Green, who invites him to speak.

"There are three families living in the two-bedroom unit upstairs from me. What are you people going to do about it? They cook this really foul food and I can smell it in my unit. They have overflowed their tub at least three times in the past month and my bathroom ceiling is falling down. I shouldn't have to live like this! I want the board to take action and get them out!"

Mrs. Young immediately jumps up to state, "The woman who lives upstairs from me comes home from work at 1 a.m. and dances around on her hardwood floors in stilettos. You have to make her stop so I can get some sleep!"

Mrs. Smith adds, "Elsie Brandt was wandering the halls again yesterday looking for her unit. She smokes in her unit and I am afraid she will cause a fire. Why aren't you making her family take care of her?"

It's Complicated

The governance of a community association demands much more than managing the cost of operation, future replacements, and preventive maintenance. The battles over condo fee increases and capital project funding often pale in comparison to dealing with the mine field of people problems. This is especially true of the self-managed association, where there is no property manager buffer between the trustees and the other unit owners who are their neighbors.

At Greenway Condominium, a 30-unit association, the unit owners chose not to engage a professional management company. The treasurer, a retired bookkeeper, uses QuickBooks to handle depositing checks, paying bills, and providing financial reports. Initially, most units were owner-occupied, purchased by first-time home buyers who were thrilled to realize the American dream or empty-nesters who were downsizing. Many owners were retired and had time to spend on the operation of the property. As former homeowners, they knew how to care for the physical elements, like roofs and siding. They liked planting flowers and socializing with their neighbors. They knew that they needed insurance policies for protection of their property because sometimes bad things happen and they complied with the rules because that is what you do to live in harmony with your neighbors. They met their fiscal obligations and paid their condo fees on time. They even approved a special assessment or two when capital projects needed to be done.

But time marched on and economic conditions changed. Some longtime members of the community sold their units and headed to assisted living, while others moved on to single family homes. Some of the new owners were occupying their units, but with the rate of return on investments so low, many savvy business folk had bought their units as an investment and were leasing them.

The trustees of this self-managed community were now struggling to accept these changes and to handle the new challenges with which they were faced. Due to the influence of the expanding global community, the board also found that communication was more difficult as many new owners and tenants were from "across the pond," often with English as a second language. In addition, cultural differences were impacting the understanding of and compliance with rules and regulations by the new owners and tenants.

What's a Board to Do?

What steps can the board of a self-managed association take to help in handling their responsibility to ensure the "quiet enjoyment" of the unit owners?

1 Follow the condominium documents.
The self-managing board needs to have a firm grasp of both its authority and its responsibilities under the association's condominium documents and by-laws. Each set of documents is different.

2 Know the municipal, state, and federal laws and regulations.
Governance is impacted by the higher authority of town, state, and federal entities. Just because the condominium documents allow certain actions does not make them legal. Conversely, there may be statutes that assist the self-managed association in dealing with violations that impact the health and safety of unit owners and residents.

3 Review recent court decisions.
Industry organizations like Community Associations Institute and many legal practices send newsletters and publications that highlight how the justice system interprets condominium law in its court decisions. Knowing the precedents for actions the self-managed board is contemplating can help prevent costly legal missteps.

4 Research resources in your area.
Many municipalities have agencies that can assist in providing information and social services that will help resolve people problems. Make sure to take advantage of these no-cost or low-cost resources.

5 Utilize professionals.
Although not without cost, there are times when the self-managed association will save money by seeking professional expertise. Discussing your issues with an attorney, accountant, or other consultant will allow you to determine the appropriate actions to be taken in each situation, while preventing more expensive mistakes.

6 Be consistent.
Address each "people" problem using a framework developed and approved by the board. Remain objective and be sensitive to the needs of the unit owners impacted and the interests of the entire community.

Ensuring that unit owners are safe and can enjoy the quiet use of their homes is the responsibility of any governing board, but is particularly challenging for the trustees of the self-managed community. CM

Patricia Brawley, CMCA, AMS, PCAM, has managed community associations for more than 16 years and is currently a management consultant with Central Management Consulting Services.

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★ Feniger & Uliasz LLP		X			51
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★ **MPD Law, LLC**		X			51
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	ME	MA	RI	VT	Page
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★ **Crowninshield Management Corp., AMO**	X	X	X	X	54
★ Dannin Mgmt. Corporation		X			54
★ The Dartmouth Group Inc., AMO, AAMC		X	X		54
Equity Partners, Inc.		X			54
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★ Franklin Square Management		X	X		54
★ Great North Property Management, Inc. AMO	X	X		X	54
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★ The Lorell Management Corp.		X			54
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	ME	MA	RI	VT	Page
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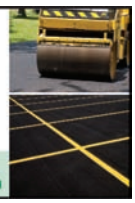

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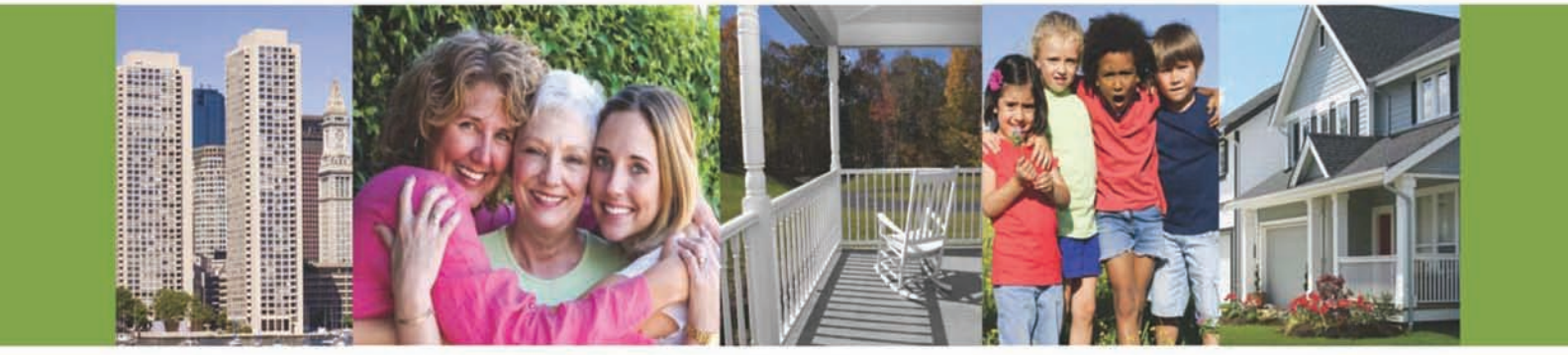

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