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Currents

Articles, ads or other submissions must be submitted prior to the dates listed below for inclusion in the issue immediately following. All dates are firm. If submission is missed, updates will be in the following issue.

Q3 2021
July 15th

Q4 2021
October 15th

Q1 2022
January 15th

Q2 2022
April 15th

Currents encourages and welcomes articles on any topic relating to the many "Currents" of community association interest. Please include a twenty to thirty word description of the author at the end of the article. All articles are subject to editing.

Please send your submissions to:
kniesel@solitudelake.com

PRESIDENT'S *perspective*

We are almost half way through this pandemic year and I'm reminded of a phrase that a retired colleague always said during times of distress," IT IS WHAT IT IS". I always understood it to mean you cannot do anything about the current situation you are in and will just have to live with it. I no longer think this after seeing the staff and volunteers here at CAI in action. I know these volunteers have a lot on their plates without taking on additional work, yet they do and do a phenomenal job. Some big obstacles have been put in front of them and they sidestep them as if nothing is in the way.

A perfect example is when we found out we could not have a second CA Day in person. Our volunteer speakers took the time to make a video presentation. This was extra effort by the volunteers that resulted in extra benefit for our registered members by allowing full access to all the classes for two weeks.

June 3rd was our first in person social event in a very long time and the social committee worked hard to create an energizing vibe surrounding this event. We had record-breaking turn out, and a good time was had by all. Thank you to the social committee for making this happen.

As we move into the second half of the year it is no longer "IT IS WHAT IT IS" but "IT IS WHAT YOU MAKE OF IT". If you want to have your attitude changed for the better, come in and sign up to be a member of a committee to feel the positive energy I am talking about.

See you soon!

Robert McKown

Bob McKown
2021 Board of Directors President
Southeastern Virginia Chapter Community Associations Institute

FROM THE *executive director*

Happy Spring SEVA-CAI!

We're operating on cautious optimism over here at the Chapter office, hoping we're on the precipice of being post-pandemic.

Last month, we hosted what will hopefully be both our first AND last all-virtual CA Day. Thanks to our many dedicated speakers and committee members, we got all of the education recorded and online for our anxiously waiting attendees. The result was an incredible opportunity for managers and homeowners alike to take an unlimited amount of courses, and at their own pace. I can confidently say we made the absolute best of a bad situation.

Looking ahead, we're ready to start getting back together! While committee meetings and education will remain virtual for a while longer, we've finally held our first in person social event in a record setting 483 days. It was a big success for the Chapter, and a giant step towards the return of normalcy. If the course remains steady, we plan to see much more of you all later on this year!

All that being said, all of our committees could use some additional manpower as they get back into the swing of things. If you're a new member looking for a way to get involved, or if you've just been on the fence about whether or not to take the plunge, call the office and let's talk! We have something for everyone, and while it is "work" - we try to make it as fun and rewarding as possible.

Hope to see you all soon!

C. Hinckley

Cariese Hinckley
Chapter Executive Director
Southeastern Virginia Chapter Community Associations Institute

Welcome
New Members!

Association Managers

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Suzanne Szabo

Bulk Trash in Your Community

By **Amy Wygans,** *Berkeley Realty Property Management*

Bulk items and trash can be a sore subject in many communities. We all have it and some of us may have no idea what to do with it or how to deal with ongoing issues. Bulk item disposal can be a concern for both Condominium Owners Associations and Property Owners Associations alike. Trash sitting on the curb or outside of the dumpster impacts the aesthetics of your community, especially if it is an ongoing problem. Is it against the rules or covenants to put bulk items out for pick up? Does your community have a place to dispose of bulk trash or is bulk item removal included in the services provided by the Association? If not, where do you take it? How can you hold residents of your community responsible for trash or bulk item violations of your governing documents? These questions are on the minds many community members and residents living in community associations and it is important to communicate with not only the membership, but residents and guests as well, to inform the entire community of the messy problems you are having.

The best place to start is always your community's governing documents. Covenants or rules may state the policy or restrictions regarding bulk items for your community. Next, check with your community manager or Board of Directors who would be familiar with contracted services and what they include, if applicable. If you do not have a rule or policy in place, the community Board of Directors should consider adopting a rule to regulate disposal. As always, when creating policies, rules or changes to your documents, the Board of Directors should ensure the Association's attorney has reviewed or finalized the document prior to it's approval. If bulk item removal is included with the services provided by your association, rules should be made to regulate how long large items can be out for pick up. Depending on your community, a designated location for placement of large items might be ideal.

Your Board of Directors or an ad-hoc committee appointed by the Board might be a good idea if research is needed to determine what local services are available and to propose what restrictions or guidelines should be in a policy for Board consideration. Depending where your property is located, your city or county may offer free services for disposal. You can check with your local public waste department to find out if they will accommodate bulk trash removal. If so, determine where it can be placed for pick up. Even if your city or county will pick it up, you need to ensure placing the items out for pick up is not a violation of your governing documents. It may be possible to create a rule or policy that accommodates services your city or county is willing to provide.

If trash service is provided by the Association or your local city or county, it might not include removal of bulk items. Some members, residents or guests may have no idea that putting large items outside of the dumpster or on the curb is likely not included in the waste removal contract or city/county services. It is usually not included in community trash contracts and can affect the contractor's ability to dispose of your regular trash. Large items can block trash totes and dumpsters. Many trash contracts do not include the extra time it takes for someone to get out of the truck to move bulk items. This means trash service can be skipped. Large items inside dumpsters can result in less space in the dumpster. This causes the dumpster to overflow with regular trash and trash bags outside of the dumpster.

If your community does not have any way to accommodate large items or the community documents prohibit them, what do you do with these oversized items? You can check with your local waste disposal department to find out if they have dump sites available. The county or city may have a local dump site that will allow you to bring large items for disposal. Some public dump sites offer a discount or rebate for local residents. If you are unable to lift or transport your large items, you can hire a general contractor or waste disposal company to come pick them up.

So how can the Board of Directors get your community members, residents or guests to stop dumping and how can the rules and policies already in place be enforced? Communication to your community is a key place to start. Be sure signs are posted, if applicable, to ensure all members, residents and guests are reminded of the restrictions. Reminders can be included in e-mail messages to the community, newsletters and correspondence that is already being mailed out to the community. Gather non-owner resident contact information and include everyone on correspondence that impacts them. Request owners keep residents and guests of their units informed and attempt to inform all who live in or visit the community whenever possible, not just relying on unit or lot owners to share the information.

Many communities with dumpsters need to pay a contractor for a special visit to remove bulk items so be vocal in your notices and correspondence about what the community is having to pay and the impact it has on your community's budget the assessments each member must pay. When discussing your budget and community assessments with the membership, point out the concerns with hiring contractors for bulk trash removal. This may not only get the attention of members responsible for the violation of the documents, it can give neighbors awareness of the problem so they report offenders.

Communities with dumpsters or disposal areas that have continuous issues could investigate and assess the cost effectiveness of a locked enclosure, fence or dumpster or the installation of cameras. If you know who is responsible for the violation, check your documents to determine if you can assess the cost of removal to the unit or lot owner responsible. Your documents may also allow for you to assess charges for violations of the governing documents. Prior to assessing any charges, the Board of Directors needs to consult with the Association's attorney to ensure the community's procedures for assessing charges meet the requirements of your governing documents and state statute.

Although it can be a messy, members can clean up their community by working together towards the common goal of keeping it a beautiful place to live.

Amy Wygans is an association management coordinator with Berkeley Realty Property Management in Williamsburg, VA. Amy has volunteered with CAI in several capacities, most recently serving on the Communications committee.

Plugging In:

Electric Vehicle Charging Stations in Virginia Community Associations

By **Kathleen W. Panagis, Esq.,** *Vandeventer Black LLP*

The past decade has seen an explosion in the popularity of electric vehicles. All expectations are that this popularity will continue to grow. There are many makes and models of electric vehicles, and they can be classified as either battery electric vehicles ("BEVs") or plug-in hybrid electric vehicles ("PHEVs")—both of which need to be charged by plugging into an outlet or charging station.

In 2020, Virginia took affirmative steps to address how Virginia community associations could regulate electric vehicle charging stations within their communities by adopting new code sections to the Virginia Property Owners' Association Act (Va. Code § 55.1-1823.1), Condominium Act (Va. Code § 1962.1), and Cooperative Act (Va. Code § 2139.1). Effective July 1, 2020, lot owners, unit owners, and proprietary lessees are permitted to install an electric vehicle charging station for their personal use within the boundaries of their lot (for property owners' associations) or unit or limited common element parking space (for condominiums and cooperatives) unless an association's declaration, condominium instruments, or other recorded governing document provides otherwise. With the rising popularity of electric vehicles, Virginia community associations should be knowledgeable in how to respond to installation requests from residents.

Considerations for Property Owners' Associations ("POAs")

The Virginia Property Owners' Association Act allows POAs to establish reasonable restrictions regarding the number, size, place and manner of placement or installation of the charging station on the exterior of the property owned by the owner. As for common areas, POAs may prohibit or restrict the installation of electric vehicle charging stations and establish reasonable restrictions as to the number, size, place, and manner of placement or installation of such charging station.

Considerations for Condominiums and Cooperatives

Both the Condominium Act and Cooperative Act permit condominium associations and cooperatives, respectively, to require as a condition of approving installation of an electric vehicle charging station that a unit owner/proprietary lessee does the following:

1. Provide detailed plans and drawings for installation of the charging station prepared by a licensed and registered electrical contractor or engineer familiar with the installation and core requirements of such charging station;

2. Comply with building codes or recognized safety standards;

3. Comply with reasonable architectural standards adopted by the association that govern the dimensions, placement, or external appearance of the electric vehicle charging station;

4. Pay the costs of installation, maintenance, operation, and use of the charging station;

5. Indemnify and hold the unit owners' association/cooperative harmless from any claim made by a contractor or supplier pursuant to Title 43 (mechanics' and other liens);

6. Pay the cost of removal of the electric vehicle charging station and restoration of the area if the unit owner or proprietary lessee decides there is no longer a need for such charging station;

7. Separately meter, at the unit owner's or proprietary lessee's sole expense, the utilities associated with such electric vehicle charging station and pay the cost of electricity and other associated utilities.

8. Engage the services of a licensed electrician or engineer familiar with the installation and core requirements of an electric vehicle charging station to install such charging station.

9. Obtain and maintain insurance covering claims and defenses of claims related to the installation, maintenance, operation, and use of the electric vehicle charging station and provide a certificate of insurance naming the unit owners' association/cooperative as an additional insured on the unit owner's/proprietary lessee's insurance policy for any claim related to the installation, maintenance, operation, or use of the electric vehicle charging station within 14 days after receiving the unit owners' association's/cooperative's approval to install such charging station.

10. Reimburse the association for any increase in common expenses specifically attributable to the electric vehicle charging station installation, including the actual cost of any increased insurance premium amount, within 14 days' notice from the unit owners' association/cooperative.

Condominium associations and cooperatives should consider engaging association legal counsel to prepare a written document regarding these statutorily-authorized

responsibilities of the unit owner or proprietary lessee. Condominium associations and cooperatives should also adopt architectural standards that govern the dimensions, placement, or external appearance of electric vehicle charging stations.

Of significance, the Condominium Act and Cooperative Acts allow an association to prohibit a unit owner or proprietary lessee from installing an electric charging station if such installation is not technically feasible or reasonably practicable due to safety risks, structural issues, or engineering conditions. This determination may be based on the information and documentation the unit owner or proprietary lessee provides to the association as well any independent inquiry the association may conduct at its own expense.

Shared Considerations for POAs, Condominiums, and Cooperatives

The Virginia POA Act, Condominium Act, and Cooperative Act all provide that lot owners, unit owners, and proprietary lessees must indemnify and hold the association harmless from all liability, including reasonable attorney fees incurred by the association resulting from a claim, arising out of installation, maintenance, operation or use of such electric charging station. This provision also allows associations to require that lots owners, unit owners, and proprietary lessees obtain and maintain insurance covering claims and defenses related to the charging station and may also require to be named as an additional insured under such policy. Associations should contact their legal counsel to prepare the necessary agreement in which the lot owner, unit owner or proprietary lessee agree to such indemnification and insurance requirements.

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Kathleen W. Panagis is an Of Counsel attorney with Vandeventer Black LLP and a member of the firm's Community Associations law team. With more than a decade of experience, she serves as general counsel to homeowner and condominium associations located in Virginia. Kathleen is an active member of SEVA-CAI and serves as a member of the chapter's Communications Committee as well as the Membership Committee.

Opening & Operating Community Pools During COVID-19

By **Laura Otto**, *HOAResources.com*

Summer is right around the corner, leaving homeowners association boards and residents wondering if community pools can open in light of the COVID-19 pandemic. Our communities in colder states have been closely watching warmer states like Florida, Texas, and California to see how they safely opened their pools.

Opening a pool is not a simple task. Every community is different, and each board must make the decision to open based on whether it has the resources to comply with guidelines from the Centers for Disease Control and Prevention, state mandates, and local health orders, says Matt D. Ober, partner at Richardson | Ober | DeNichilo in Pasadena, Calif., and a fellow in CAI's College of Community Association Lawyers (CCAL).

Equally important is that it's the board's decision to reopen any facility following due diligence and proper business judgment, says Ober, adding that "just because the state and county allow pools to be open does not mean the association must open the pool." Additionally, the board must evaluate whether it has the funds for signage, paying staff to serve as pool monitors, and for frequent cleaning and disinfecting to safely open the community pool.

Ober recommends the following protocols for communities operating their pools this summer.

- Place signage at pool entrances reminding residents of pool rules and to follow social distancing both in the pool and around the area.
- Limit pool use to certain hours to better control the number of residents and avoid crowding. Communicate that pool use and hours are subject to change to comply with COVID-19 protocols and precaution
- Have residents sign up to use the pool during scheduled intervals (30 minutes or an hour, for example). Require sign-ups by a certain time the day before.
- Consider opening the pool for designated lap swim only. If people cannot do laps and want to use the pool, designate separate lap swim times.
- If there are restrooms in the pool area, ensure the facilities have full hand sanitizer and soap dispensers and are cleaned and disinfected frequently.
- The pool area should be open for pool use only. In addition, guests should not be permitted in the pool or pool area.
- Consider removing or taping off some of the pool area furniture so chairs left in place are 6 feet apart to allow swimmers a place to rest after they leave the pool.

It is recommended that these protocols be adopted by the board as community rules to make them enforceable, explains Ober.

Can associations ask for residents to provide proof of having been vaccinated against COVID-19 before they use the pool or common areas this summer?

According to Ober, there are several concerns about requiring that a resident disclose they were vaccinated because of their right to privacy in not having their medical history made public or disclosed to third parties. Although HIPPA laws do not apply to private entities such as community associations, expectations of privacy and confidentiality need to be considered.

Homeowners association boards must provide residents information so they can protect themselves and take steps to minimize potential liability, Ober notes. "Not opening a pool after conducting due diligence and concluding that it could not be done safely would not expose the association to liability," he adds.

In addition, Ober says it would be "difficult if not impossible" for a resident to prove they contracted the virus because the association opened the pool. However, "opening the pool and not following the proper protocols or not requiring that people comply with rules in place could subject the association to liability." CAI advocates for limited liability laws for community associations that follow CDC, state, and local guidelines.

Wood'nt You Like to Know?

Skyrocketing Lumber Prices and the Effect on Multifamily Community Projects

By **Lance Bellman,** *Ready Roofing Company*

As a rule, due to HOA/COA guidelines, mostly associated with banking/lender requirements…the multifamily construction industry has a reputation for being recession proof! However, due to the enormous price increase on lumber, many communities have voted to delay the start of projects which require a large purchase of lumber in hopes of seeing a return to normal pricing in the summer of 2021. But is that even going to happen in the fiscal year of 2021?
To help better answer that, let us understand how we got here in the first place.

Just so you, the reader, knows I have been a life-long construction enthusiast. I make my living in a second career, within this industry for what is now close to twenty years. I subscribe to several industry publications, either in magazine form or online newsletters. I belong to multiple industry dedicated organizations, like CAI, and I follow several more-seasoned professionals on YouTube, Reddit, Quora and LinkedIn. All this said, I have heard the lumber shortage blamed on everything from forest fires, beetles, tariffs, supply chain failure, COVID-19, hurricanes, climate change, the solar cycle and perhaps just plain greed.

Believe it or not, in researching for this article, I found there to be a bit of truth in all the above! I will try to tie this together, in a descending order of importance, to show how this landed us where we are as of Spring 2021. As a roofing professional, I watched manufacturers and supply houses that I deal with daily, begin to halt production entirely on all but the top selling products and reduce supply, as well as raise material prices a total of five times in a span of a year. *(As a contractor, try explaining why the identical building you roofed in the beginning of the project has taken a price hike…five times within a year.)*

From the top down this was blamed on the pending spread of COVID-19 and what was forecasted as a crippling blow to our country and its economy. With all the uncertainty looming, it was difficult to predict what would happen next. At the end of the day, the COVID tragedy had devastating effects on some industries and boosted others. The construction industry, for one, was positively impacted. Here's how:

While the massive lumber manufacturers were busy covering themselves against loss by reducing inventory and slowing the creation of new surplus, they missed the long game. That long game being hard working Americans, when their free movement is restricted do

not just go "Quietly into the Night." We get busy, like we always have in times of crisis! During the crisis, many chose to make improvements to their homes in the way of basement build-outs, kitchen remodel, closet enlargement, backyard deck or just general maintenance issues which sprung to life! However, what happened next is rarely ever seen in conjunction with each other…a negative supply, meeting a positive demand. We have had each event at separate times but to see the two come together, with the other contributing factors…we really did have the proverbial 'Perfect Storm'!

There were not even preorders on the books and major hardware retailers had shelves sitting completely empty. It was a strange site to see the lumber aisles empty, except for rejected wood, and with the preemptive lay-off of employees due to the virus, it seemed to have a post-apocalyptic effect. This was the beginning of the 'Lumber Crisis'!

** Insert pending doom sound effects here. **

The second largest factor to contribute to our lumber crisis was an unforeseen side effect of keeping the interest rates low for home purchases. What is normally the two lowest real estate sale months of the year, the numbers were up…19% in December 2020 and 5% in January 2021! However, the movement (relocation) was concentrated almost specifically to big cities. Folks jumped at the opportunity to leave most big cities that were hit the hardest by COVID-19. The general fear of the virus, lower interest rates and the newfound ability to work more efficiently and effectively from home caused a mass exodus from large cities. New York, Los Angeles, Philadelphia, Boston, Chicago, and Miami all took massive hits to their highest income earning communities, a total of nearly sixteen million change of address requests were filed at the USPS during the summer of 2020! This even sparked the conversation in some city legislatures to enact an 'Exodus Tax' to be assessed at the sale of properties within city limits. Well naturally, with the selling and purchasing of all this real estate, so comes more restoration and renovation either by requirement of home inspections or just aesthetic or utilitarian customizations for/by the new owners. Regardless, more projects, more lumber… lumber that is just not there!

To make matters worse there was a behind the scenes feud brewing between Canadian and U.S. lumber suppliers far before we had even heard of the COVID-19 virus. Canada had recently made subsides for Canadian-based lumber suppliers which sparked a riff here in the U.S. More of the large millhouses begin to purchase Canadian lumber, as it was notably less expensive, and our local suppliers began to feel the hit. Lumber lobbyist hit back hard which provoked the U.S. government to introduce an approximately 25% tariff to restore the balance. Enter COVID-19…fortunately the U.S. has now enacted legislation to see lumber duties reduced by 50% to help rescind the tariff and relieve the shortage. This will happen, but the effects probably will not be seen until the later part of this year and price/cost adjustments always lag.

Then there is the issue of the 'Solar Cycle' which is an eleven-year magnetic cycle of our Sun, and its effect on the temperature of earth and an extended lifespan, due to a lack of cold killing off the 'Mountain Pine Beetle'… yeah, that is happening too! 'Hurricanes'…the 2020 Atlantic hurricane season was the most active and the fifth-costliest Atlantic hurricane season on record. The season also had the highest accumulated cyclone energy since 2017. In addition, it was the fifth consecutive above average season from 2016 onward. 'Wildfires' in the U.S. you ask? By December 18, 2020 there were about 57,000 wildfires compared with 50,477 in 2019, according to the National Interagency Fire Center. More than 10.3 million acres were burned in 2020, compared with 4.7 million acres in 2019.

Finally, as mentioned, let me not leave out the always present culprit…'Greed'! Perhaps not the worst of the 'Seven Deadly Sins' but you can be certain when there's an opportunity to prosper there will always be an 'Opportunist' looking to take advantage of a 'good' crisis. I am all but certain there are those who are prospering on the backs of others while most good folks like us dig in together to get through these trying times. Before you purchase or sign-off on any contract, do your research. Remember, in this case the internet is your friend, and so are the variety of resources and connections available to you through your local CAI chapter.

Be safe, stay healthy and think positive, brighter days are on the horizon, in the meantime…"Measure twice, cut once and save your scraps!"

Lance Bellman is a project manager for the Ready Roofing Company in the Hampton Roads area. He has been an active member of the SEVA-CAI community for over a decade, serving on numerous committees, and receiving both the'Rising Star' and 'Newsmagazine Committee Volunteer of the Year' awards. He can be reached at lance.bellman@readyroofing.com

2021 Insurance Market Forecast:

What is Changing, Why, and How to Respond?

By **Jessica M. Knutsen, CIC, EBP, CIRMS®,** Vice President, *USI Insurance Services LLC*

As we enter the 2nd quarter of 2021, there is a yearning that the Summer will end the pandemic and shepherd us back into our ordinary lives. Undoubtedly, COVID-19 has exacerbated the already hardening insurance market conditions, and it will remain as one of the main drivers in 2021. But there are many other factors that have contributed to this as well. A couple of years ago, the Common Interest Community (CIC) industry would conventionally budget for a conservative 3% annual insurance increase. In fact, some communities with exceptional loss experience were able to see premium reductions after evaluating multiple offers. However, the insurance market has been in a hardening climate since the 1st half of 2019, and it is anticipated that substantial rate increases and coverage restrictions will continue in 2021 as the multiple offers to switch carriers erode swiftly. Even associations with a perfect loss ratio will be affected by the negative emerging trends. Understanding the drivers of the new market conditions and planning for them will be instrumental for Boards of Directors and Community Managers.

As illustrated in the following chart, insurance rates have rapidly increased in the last three years:

Forecast by Product Line	Q4 - 2018	Q2 – 2019	Q4 – 2019	Q2 - 2020
Property, non-catastrophic with good loss history	Down 3% to up 3%	Up 10%	Up 10% to 20%	Up 5% to 15%
Property, with catastrophic exposure (coastal) and minimal	Flat to up 5% to 10%	Up 10% to 40%	Up 25% to 40%+	Up 20% to 40%+
Property, non-catastrophic or catastrophic with poor loss history	Up 10% to 15%+	Up 10% to 40%+	Up 30% to 60%+	Up 40%+
General Liability	Flat to up 5%	Flat to up 15%	Up 5% to 10%	Up 5% to 10%
Directors & Officers	Flat to up 5%	Up 5% to 10%	Up 5% to 20%	Up 10% to 50%
Crime	Down 5% to up 5%	Down 5% to up 5%	Up 5% to 25%	Up 10% to 25%
Workers Compensation	Down 10% to up 5%	Down 10% to up 5%	Down 10% to up 5%	Down 5% to up 5%
Umbrella	Flat to up 3%	Up 10% to 20%	Up 10% to 25%	Up 10% to 50%
Cyber Liability	Flat to up 5%	Flat to up 5%	Flat to up 10%	Up 5% to 20%

*Source: 2018, 2019 and 2020 USI Commercial Property & Casualty Market Outlook (www.usi.com)

1. Preparing Budgets - *Supplementary emerging trends to consider besides rate increases:*

- Carrier capacity restrictions for Property and Umbrella coverage.
- Carriers moving away from writing insurance for multifamily residential housing, or exiting the market altogether.
- Tighter underwriting guidelines allowing underwriters to be highly selective and pass on associations that lack submission quality. This translates into a reduced number of carriers offering quotes.
- Delay in the renewal process due to a higher volume of submissions on behalf of associations shopping for lower rates.
- Higher property deductibles or multiple property deductibles such as water damage per unit deductibles, percentage deductibles for earthquake, wind and named storms.
- Coverages are being slashed with new policy forms such as Communicable Disease Exclusions and new restrictions related to Strikes, Riots and Civil Commotion (SRCC).
- Higher Cyber liability exposure with many Community Managers working remotely. Ransomware and phishing attacks have become more sophisticated by approaching 3rd party vendors who support associations to gain access to confidential information.
- New COVID-19 questionnaires for communities with reopened amenities.

2. Market Drivers

- National Catastrophes: The violent 2017 hurricane season exceeded $250 billion in destruction. The recent wildfires and floods have also aggravated the market, putting insurers and reinsurers worldwide in an unprofitable position.
- Pass-through of increasing reinsurance costs: For insurers to be able to cover the aforementioned catastrophic losses, they also have to buy insurance from the reinsurance market. New reinsurance negotiations are arranged for January 1st, 2021 so it is expected that the market will adjust further.
- Rigorous review of the adequacy of insured values. The unfavorable loss development from the catastrophic events is forcing insurance carriers to review and increase building valuations. Inflation rates and the increase in cost of labor are also driving this trend. If an agreement is not reached, carriers are adding coinsurance penalties and/or a margin clause. The most vulnerable properties are frame buildings, buildings 30+ years old without documented upgrades and maintenance, communities without enough segregation and non-sprinklered buildings.
- Non-flood Water Damage: Pipe breaks and aging buildings have increased the frequency and severity of water damage losses.
- COVID-19 related insurance claims: Even though many claims related to COVID-19 were denied in 2020, insurance carriers incurred investigation and defense costs. Based on the Lloyd's of London economic assessment on the impact of COVID-19, it was

estimated that the 2020 underwriting losses covered by the industry could reach $107 billion.

- Carrier's focus on profitability: According to Verisk and the American Property Casualty Insurance Association (APCIA), U.S. carriers reported a 26% reduction in net income for the 1st half of 2020. Moreover, carriers are facing reduced investment returns from the low interest rate environment.
- Social Inflation: Nuclear verdicts, larger jury awards, plaintiff-friendly legal decisions, increased litigation, anti-corporate sentiment, and broader contract interpretations have contributed to rising costs of insurance claims, which in today's climate is referred to as social inflation.

3. How can Common Interest Communities navigate these new challenges?

- ✓ Prepare early for the renewal of your insurance program. Associations won't be able to obtain renewal quotes this early, but starting the process at least 120 days in advance will secure the best outcome.
- ✓ Re-evaluate the criteria to select an insurance broker. Regrettably, sometimes this decision is based on the lowest premium. A broader set of criteria should also contemplate:
  - The broker's experience working exclusively within the Common Interest Community (CIC) industry. Any individual who holds a P&C license can sell insurance, but working in the CIC arena requires a very specific level of expertise to understand the unique dynamics and exposures of the industry.
  - Portfolio size and diversity handled by the insurance broker. Insurance programs and secondary lender requirements are different for condominium associations, HOA's and cooperatives.
  - Risk Management resources (analytics, in-house loss control, education, claims management) available for the association and its owners.
  - Level of engagement with board meetings and town hall meetings in addition to the regular annual renewal meeting.
- ✓ Given the new underwriting trends, obtaining three different bids from three different brokers could be counterproductive and time consuming for Community Managers. The importance of a broker having full market access will be instrumental in the negotiation process.
- ✓ If more than one broker is required, compare multiple brokers based on the above criteria and select only one broker to go out to the market on your behalf. This will avoid saturating the market with multiple submissions for the same association. You can also assign markets for two different brokers.
- ✓ Empower your broker with updates and loss mitigation details to improve the quality of the submissions. This will be crucial in obtaining the best results from time-strapped underwriters. Due to the high volume of submissions, carriers are prioritizing their time by the quality of information received. This will especially affect associations with unfavorable losses.
- ✓ Continue to maintain your property – communicate active maintenance strategies, safety provisions, fire protection maintenance and upkeep to your broker.
- ✓ Communicate the purpose of carrying insurance and encourage homeowners to keep their units well maintained - especially appliances. If one single unit sustains a large loss, the entire community will share the burden of a significant rate increase when assessments are adjusted.
- ✓ Contemplate increasing property deductibles and Directors & Officers liability retentions to protect the loss history. Your association may need to consider lower Umbrella limits as well. Brokers have the capability to assist with this assessment based on historical data and benchmarking tools, to validate limits purchased by similar communities.
- ✓ Discuss and assess the need to amend the association's deductible responsibility with your general counsel. If not needed, obtaining a deductible resolution can also help.
- ✓ Be cautious of risk assumption and transfer through contractual language. Promote communication between your general counsel and insurance broker before signing new contracts.
- ✓ Evaluate the association's exposure to phishing attempts, ransomware, and other cyber threats.

Many uncertainties remain about the impact of COVID-19 in the insurance market. It is a fiduciary obligation for Boards of Directors and Community Managers to understand the emerging insurance trends and plan cautiously to navigate through the new challenges. Partnering with a broker who is well-versed in the Common Interest Community industry is pivotal in this marketplace.

Jessica has been practicing insurance for 15 years. Jessica holds the Certified Insurance Counselor (CIC) designation, the Educated Business Partner Distinction (EBP) and the Community Insurance & Risk Management Specialist® (CIRMS). She was recognized as the 2020 Educator of the Year by the Washington D.C. Metropolitan Chapter of CAI, and currently serves on the CAI national Business Partner Council.

COMMUNITY ASSOCIATIONS AND TRANSGENDER DISCRIMINATION

By **Susan B. Tarley, Esq., CCAL®,** *Tarley Robinson, PLC*

"People should be able to secure a roof over their heads without being subject to sex discrimination."

This seems to be a simple statement that we can all agree on, and it supports the stated purpose of the Fair Housing Act to make housing available to everyone, without exception. These protections extend to lesbians, gays, bisexuals, and transgenders because sex discrimination under the law includes discrimination based upon sexual orientation and gender identity.

Many believe that the Fair Housing Act applies only when a person is buying or renting a home, or has applied for a mortgage. But the Fair Housing Act is also applicable to our community associations. Although common interest community associations are not involved in "residential real estate-related transactions" per se, the courts have found that the protections of the Fair Housing Act extend to post-acquisition matters, including, the use and enjoyment of a dwelling, the provision or enjoyment of services or facilities, and equal treatment in the enforcement of covenants.[1] Consequently, protecting residents in the enjoyment of their home, and in being provided equal access and use of community amenities, and treating each person in a non-discriminatory manner when enforcing the governing documents is a responsibility of our community associations.

This article will review developments in the law, including Executive Order 13988, the most recent Transgender Survey conducted by the National Center for Transgender Equality; review appropriate terminology to be used when addressing gender identity; examine applicable housing laws; present a short history of case law; and provide best practice tips for community associations.

Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation

The stated policy in the Executive Order is:

Every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. Children should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports. Adults should be able to earn a living and pursue a vocation knowing that they will not be fired, demoted, or mistreated because of whom they go home to or because how they dress does not conform to sex-based stereotypes. People should be able to access healthcare and secure a roof over their heads without being subjected to sex discrimination. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.[2]

This is a major development in the protection of transgender people from discrimination. When I wrote on this topic in 2017 we were still extrapolating from sex discrimination cases to find liability for discrimination based on gender identity. We have made strides in the past year towards protecting transgender people from discrimination. This includes:

- Recognition by the United States Supreme Court in Bostock v. Clayton County, 590 U.S. _____ (2020) that discrimination on the basis of sex includes discrimination based on gender identity or sexual orientation;
- Issuance of Executive Order 13988;
- Virginia's enactment of legislation to prohibit discrimination based on gender identity or sexual orientation;
- Renewed commitment from the United States Department of Housing and Urban Development to "prevent and combat discrimination because of sexual orientation and gender identity"; and
- Introduction of the Equality Act.

The Equality Act (H.R. 5 – 117th Congress 2021-2022) has been introduced and has passed the United States House of Representatives on February 25, 2021. It prohibits discrimination based on sex, sexual orientation and gender identity in housing, education, employment, federal funding, credit, public accommodations and facilities, and the jury system. It further prohibits denying access to shared facilities such as locker rooms and bathrooms based on a person's gender identity. It is now pending in the United States Senate.

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2015 U.S. Transgender Survey

A 2015 survey found that transgender people experience discrimination and violence at an alarming rate in the United States.[3] The 2015 U.S. Transgender Survey conducted by the National Center for Transgender Equality had 27,715 respondents representing every state in the United States, the District of Columbia, American Samoa, Guam, Puerto Rico, and various United States military bases overseas. The 2015 Survey covered employment, education, family life, health, criminal law, and housing.

As stated in the Executive Summary for the 2015 Survey "The findings reveal disturbing patterns of mistreatment and discrimination and startling disparities between transgender people in the survey and the U.S. population when it comes to the most basic elements of life, such as finding a job, having a place to live, accessing medical care, and enjoying the support of family and community."

The 2015 Survey was the second survey of its type. In 2011 the National Center for Transgender Equality conducted its first survey. The first survey had 6,450 respondents. The 2015 Survey had 27,715 respondents. Overall, the results were very similar in finding overwhelming mistreatment of transgender persons. The 2015 Survey expanded the topics and added more specific questions.

The Executive Summary of the 2015 Survey included analysis comparing the results of the survey to the U.S. population. The survey found that 29% of the respondents are living in poverty compared to 14% of the U.S. population. Only 16% of the respondents are homeowners compared to 63% of the U.S. population.

The results concerning the harmful effects of discrimination and stigma on transgender persons' mental and physical health are alarming. 39% of the respondents experienced serious psychological distress within the month before completing the survey compared to 5% of the U.S. population with 40% reporting having attempted suicide. The 40% result is frightening, and even more so when compared to the U.S. population statistic of 4.6%. Similar results were found in the 2015-2016 California Health Interview Survey ("CHIS").[4] The CHIS found that there are 92,000 transgender adults between the ages of 18 and 70 making up 0.35% of California's non-institutionalized adult population. The CHIS results showed that 1 in 5 of California's transgender persons have attempted suicide which is 6 times the states cisgender rate.

Respondents in the 2015 Survey reported disturbing levels of mistreatment, harassment and violence that far exceed the levels reported by the U.S. population. 46% of the respondents experienced verbal harassment, 10% were sexually assaulted, and 9% of the respondents were physically attacked in the past year. During their lifetime, 47% of the respondents reported being sexually assaulted.

Respondents were asked questions concerning housing discrimination and homelessness: 23% experienced housing discrimination in the past year; 30% of the respondents have been homeless during their lifetime with 26% of those respondents avoiding homeless shelters because of fear of mistreatment; and 70% of the respondents who stayed in a homeless shelter were harassed, sexually or physically assaulted, or kicked-out because of being transgender.

Terminology

Review of terminology is critical to being able to understand and discuss gender identity. Using the wrong words can be offensive to a transgender person and indicative of a perceived or intended slight.

The following definitions are from the GLAAD website:[5]

- **Sex:** The classification of a person as male or female. At birth, infants are assigned a sex, usually based on the appearance of their external anatomy (This is what is written on the birth certificate.). A person's sex, however, is actually a combination of bodily characteristics including: chromosomes, hormones, internal and external reproductive organs, and secondary sex characteristics.

- **Gender Identity:** A person's internal, deeply held sense of their gender. For transgender people, their own internal gender identity does not match the sex they were assigned at birth. Most people have a

gender identity of man or woman (or boy or girl). For some people, their gender identity does not fit neatly into one of those two choices (see non-binary and/or genderqueer below.) Unlike gender expression (see below) gender identity is not visible to others.

- **Gender Expression:** External manifestations of gender, expressed through a person's name, pronouns, clothing, haircut, behavior, voice, and/or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine or feminine changes over time and varies by culture. Typically, transgender people seek to align their gender expression with their gender identity, rather than the sex they were assigned at birth.

- **Sexual Orientation:** Describes a person's enduring physical, romantic, and/or emotional attraction to another person. Gender identity and sexual orientation are not the same. Transgender people may be straight, lesbian, gay, bisexual, or queer. For example, a person who transitions from male to female and is attracted solely to men would typically identify as a straight woman.

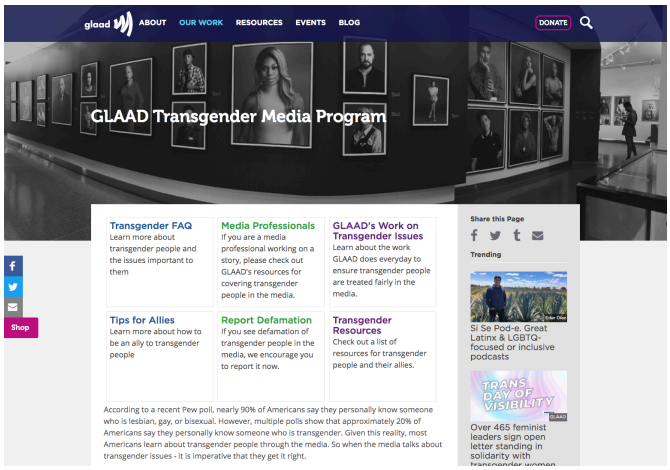
- **Transgender (adj.):** An umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth. People under the transgender umbrella may describe themselves using one or more of a wide variety of terms - including transgender. Some of those terms are defined below. One should use the descriptive term preferred by the person. Many transgender people are prescribed hormones by their doctors to bring their bodies into alignment with their gender identity. Some undergo surgery as well. But not all transgender people can or will take those steps, and a transgender identity is not dependent upon physical appearance or medical procedures.

- **Transsexual (adj.):** An older term that originated in the medical and psychological communities. Still preferred by some people who have permanently changed - or seek to change - their bodies through medical interventions, including but not limited to hormones and/or surgeries. Unlike transgender, transsexual is not an umbrella term. Many transgender people do not identify as transsexual and prefer the word transgender. It is best to ask which term a person prefers. If preferred, use as an adjective: transsexual woman or transsexual man.

- **Trans:** Used as shorthand to mean transgender or transsexual - or sometimes to be inclusive of a wide variety of identities under the transgender umbrella. Because its meaning is not precise or widely understood, one should be careful when using it with audiences who may not understand what it means. Avoid this term unless used in a direct quote or in cases where you can clearly explain the term's meaning in the context of your story.

- **Cross-dresser:** While anyone may wear clothes associated with a different sex, the term cross-dresser is typically used to refer to men who occasionally wear clothes, makeup, and accessories culturally associated with women. Those men typically identify as heterosexual. This activity is a form of gender expression and not done for entertainment purposes. Cross-dressers do not wish to permanently change their sex or live full-time as women. Replaces the term "transvestite".

- **Transition:** Altering one's birth sex is not a one-step procedure; it is a complex process that occurs over a long period of time. Transition can include some or all of the following personal, medical, and legal steps: telling one's family, friends, and co-workers; using a different name and new pronouns; dressing differently; changing one's name and/or sex on legal documents; hormone therapy; and possibly (though not always) one or more types of surgery. The exact steps involved in transition vary from person to person. Avoid the phrase "sex change".



View more resources on the GLADD website

It is important to use the pronoun(s) that the transgender person wants you to use. This guidance is provided from the GLAAD website:[6]

- **If you don't know what pronouns to use, listen first.**

If you're unsure which pronoun a person uses, listen first to the pronoun other people use when referring to them. Someone who knows the person well will probably use the correct pronoun. If you must ask which pronoun the person uses, start with your own. For example, "Hi, I'm Alex and I use the pronouns he and him. What about you?" Then use that person's pronoun and encourage others to do so. If you accidently use the wrong pronoun, apologize quickly and sincerely, then move on. The bigger deal you make out of the situation, the more uncomfortable it is for everyone.

- **Don't ask a transgender person what their "real name" is.**

For some transgender people, being associated with their birth name is a tremendous source of anxiety, or it is simply a part of their life they wish to leave behind. Respect the name a transgender person is currently using. If you happen to know the name someone was given at birth but no longer uses, don't share it without the person's explicit permission. Similarly, don't share photos of someone from before their transition, unless you have their permission.

Housing Laws Protecting Transgender People

The housing laws that prohibit discrimination include the Federal Fair Housing Act (42 U.S.C. 3601-3619) (the "Act"), and state and local housing laws prohibiting discrimination. The question under the Act has been whether prohibiting discrimination based on sex covers discrimination against transgender persons. Recent case law seemed to indicate that the prohibition based on sex would protect a transgender person when the discrimination is based on sexual stereotypes. In other cases, transgender persons have also been protected under the Act on the basis of disability when the transgender person has Gender Dysphoria.[7] With the finding in *Bostock v. Clayton County* and Executive Order 13988, it is clear that discrimination based on gender identity is against the law as it violates the Act.

HUD became the first agency to implement the Executive Order on February 11, 2021. HUD has directed its Office of Fair Housing and Equal Opportunity ("FHEO") to "… accept for filing and investigate all complaints of sex discrimination, including discrimination because of gender identity or sexual orientation, that meet other jurisdictional requirements."[8]

Housing protections are also found in state and local laws. 22 states and the District of Columbia have enacted housing laws protecting individuals from discrimination based on gender identity and sexual orientation. The states include California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Virginia and Washington.

HUD's February 11, 2021 memorandum further addresses state and local agencies that enter into agreements with the Fair Housing Assistance Program ("FHAP"). These state and local agencies process complaints under laws that HUD certifies are "substantially equivalent" to the Act. HUD has stated that these agencies will need to enact or have laws that include prohibitions of discrimination based on sexual orientation and gender identity or must follow the Bostock rationale to include sexual orientation and gender identity as prohibited on the basis of sex. Four states have adopted the rationale from *Bostock v. Clayton County* into state law. These states include Kansas, Nebraska, North Dakota and Pennsylvania.[9]

HUD has stated "We will collaborate with our FHIP (Fair Housing Initiative Program) and FHAP partners, particularly over the next several months, to fully engage our fair housing enforcement, advocacy, and public education efforts across the housing market to prevent and combat discrimination because of sexual orientation and gender identity."[10]

Summary of Case Law on Transgender Discrimination

Gender identity discrimination has often been viewed as sex discrimination based on sexual stereotype. In 2010, HUD issued a memorandum taking note of *Price Waterhouse* and its progeny, recognizing that sex discrimination prohibited by the Fair Housing Act includes discrimination because of gender identity. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) is an employment case that involved a sex discrimination claim by a female employee at Price Waterhouse.

The female employee, Hopkins, filed suit against her employer after she was passed over for a promotion to be made a partner two years in a row. Hopkins had worked for Price Waterhouse for five years and was a senior manager. Price Waterhouse had 662 partners with seven of them being women. When Hopkins was proposed as a partner there were eighty-seven other employees who were proposed for partnership, all men. Despite being instrumental in landing a $25M contract with the Department of State, Hopkins was denied partnership and provided with a letter that "told her that to increase chances of promotion she needed to "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.""

The Court found in favor of Hopkins, noting that discrimination based on sexual stereotypes is discrimination based on sex under Title VII. The Court stated: "[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes."

In *Thomas v. Osegueda*, No.2-15-CV-0042, 2015 WL 3751994 (N.D. Ala., 2015), the District Court included an extensive analysis of HUD's expanded view of the applicability of sex discrimination to gender identity discrimination and sexual orientation discrimination. The Court found that the Act did not define the scope of "sex" discrimination, and that it was within HUD's jurisdiction under the Act to have authority over gender non-conformity discrimination.

Transgender discrimination has also been pursued as disability discrimination. In *Wilson v. Phoenix House*, 2013 N.Y. Slip Op. 23417 (N.Y. Sup.Ct. 2013), the Court found that Gender Identity Disorder is a disability under New York law, specifically, the New York State Human Rights Law and the New York City Human Rights Law. The *Wilson* case involved a homeless transgender woman who was diagnosed with Gender Identity Disorder at the age of 16. She was arrested for a drug offense and was subsequently required to participate in a residential treatment program. The program at Phoenix House would not let her be a woman. She was prohibited from wearing a wig and high heels. She was required to sit on the men's side of the room during counseling. She was required to use the men's bathroom and her sleeping accommodations were with men. The defendant in the case had filed a motion to dismiss. The Court denied the motion ruling that Wilson could continue in her claim based on discrimination.

Smith v. Avanti, 16 CV 0091 (D. Col. 4/5/2017) is the first housing discrimination case that found that the Act protects a transgender person based on sex discrimination, specifically discrimination based on sex stereotypes. In *Smith*, the defendant homeowner refused to rent to the plaintiffs because of their "unique relationship." The plaintiffs are a same-sex couple, one of whom is a transgender woman. The Court found the defendant's refusal to rent to Plaintiffs violated the federal Fair Housing Act on the basis of sex. The Court stated "… the undisputed material facts show defendant violated FHA by discriminating against the plaintiffs based on their sex. For example, in referring to the Smith's "unique relationship" and their family's

"uniqueness," defendant relies on stereotypes of to or with whom a woman (or man) should be attracted, should marry, or should have a family." The Court did not make a finding that sex discrimination under the Act includes discrimination based on sexual orientation or gender identity, stating that such a claim was not made in the plaintiffs' motion, but rather the plaintiffs had plead sex discrimination based on sex stereotypes.

Bostock v. Clayton County, 590 U.S. _____ (2020) is the recent case that has led to Executive Order 13988. This case involved 3 plaintiffs, who had been terminated from their employment. Gerald Bostock, a County employee was fired after he joined a gay recreational softball league. Donald Zarda was employed by Altitude Express and was fired days after mentioning he was gay. Aimee Stephens presented as a male when she was hired by R.G. & G.R. Harris Funeral Home was fired after she told them that she planned to live and work full time as a woman. The Court found that an employer who fires an employee for being gay or transgender violates Title VII of the Civil Rights Act of 1964. The Court stated "Today, we must decide whether an employer can fire someone simply for being homosexual or transgender. The answer is clear. An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."

Best Practices for Common Interest Communities

Transgender persons want to be treated with respect, fairness and equality. The underlying goal of the Act is to prohibit discrimination and treat all humans equally. As stated by the Court in *Wilson*, "[t]he legal and political community has made great strides in the last decade toward assuring legal equality for lesbian, gay and bisexual persons… However, with regard to transgendered and other gender nonconforming people, there has been far less progress in addressing their legal rights. In fact, there has been a considerable lack of understanding in the courts with regard to issues of concern to this population." The past year has moved us forward with protections for transgendered and other gender nonconforming people.

HUD has stated its intent to investigate housing discrimination claims based on gender identity. Virginia has enacted legislation that protects people from discrimination based on gender identity and sexual orientation. The Act provides protection to transgender persons based on recent case law. The Act further protects disabilities which include Gender Dysphoria. Therefore, it is important for our communities and their managers and lawyers to avail themselves of all available information and education on this topic.

Training for new board members should include a Fair Housing component which includes information on gender identity discrimination. Education sessions on this topic should include a review of terminology, a recognition of the mistreatment and harassment that transgender people endure, and an understanding of the applicable laws that protect transgender people in housing matters, and in particular within common interest communities.

Establishing a policy on complying with Fair Housing laws and being a welcoming and diverse community sets the tone for our communities. Discussions on necessary changes that need to be addressed by our communities is recommended. The shared use of bathrooms and locker rooms and the right of a person to choose which they use based on their gender identity requires our communities to review rules and regulations. Education of residents in the community is an important step as the discussion of transgender discrimination involves more than who can use which bathrooms at a pool or clubhouse. The education program for residents should include all of the information that is provided to board members

when they participate in Fair Housing training. It seems inevitable that "bathrooms" can become the big topic on this issue so it is important to keep it simple and in context. New signage, and modifications to communal type bathrooms to provide privacy – think fully-enclosed stall – are not impossible or unreasonably expensive to accomplish.

It is critical that management, the board of directors, and association counsel provide leadership on this issue. Overreacting and engaging in hyperbole on the topic is strongly discouraged. Educating the community in a thoughtful manner, and with a focus on the law and its applicability to our associations is paramount to avoid discrimination claims and to establish your community as a welcome and diverse neighborhood.

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[1] *See, e.g., Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d 327 (7th Cir. 2004) (a suit against a homeowners' association for allegations of religious discrimination); *Bloch v. Frischholz*, 587 F.3d 771 (7th Cir. 2009) (allowing plaintiffs to proceed with religious discrimination claims against a homeowners' association under an intentional discrimination theory); *Savanna Club Worship Service, Inc. v. Savanna Club Homeowners' Association, Inc.*, 456 F.Supp.2d 1223 (2005) (""…the rights and privileges associated with membership within the community" are "part and parcel of the purchase of a home within a planned community" and "discriminatory conduct which deprives [members] of exercising those rights would be actionable un the FHA""); *Llanos v. Estate of Coehlo*, 24 F. Supp. 2d 1052, 1060 (E.D. Cal. 1998)(The community association's rules prohibiting children from using two of the community's pools were "facially discriminatory" because they "effectively confine[d] children to the family section and prohibit[d] them from enjoying the privileges accorded to adults living in the adult section.").

[2] https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/ (last visited March 25, 2021).

[3] 2015 Transgender Survey, https://www.ustranssurvey.org/ (last visited March 25, 2021).

[4] *Demographic and Health Characteristics of Transgender Adults in California: Findings from the 2015-2016 California Health Interview Survey,* Jody L. Herman, Bianca D.M. Wilson, Tara Becker, PhD, October, 2017, http://healthpolicy.ucla.edu/publications/search/pages/detail.aspx?PubID=1695 (last visited March 25, 2021).

[5] *GLAAD Media Reference Guide, 10th Ed. Glossary of Terms – Transgender*, https://www.glaad.org/reference/transgender (last visited March 24, 2021).

[6] https://www.glaad.org/transgender/allies Tips for Allies (last visited March 24, 2021).

[7] *GLAAD Media Reference Guide, 10th Ed. Glossary of Terms – Transgender.* In 2013, the American Psychiatric Association released the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) which replaced the outdated entry "Gender Identity Disorder" with *Gender Dysphoria* and changed the criteria for diagnosis. The necessity of a psychiatric diagnosis remains controversial, as both psychiatric and medical authorities recommend individualized medical treatment through hormones and/or surgeries to treat gender dysphoria. Some transgender advocates believe the inclusion of Gender Dysphoria in the DSM is necessary in order to advocate for health insurance that covers the medically necessary treatment recommended for transgender people.

https://www.glaad.org/reference/transgender (last visited March 25, 2021).

[8] https://www.hud.gov/sites/dfiles/FHEO/documents/WordenMemoEO13988FHActImplementation.pdf

[9] https://hrc-prod-requests.s3-us-west-2.amazonaws.com/HRC-SEI20-report-Update-022321-FInal.pdf?mtime=20210322114741&focal=none, 2020 State Equality Index, A Review of State Legislation Affecting the Lesbian, Gay, Bisexual, Transgender and Queer Community and a Look Ahead in 2021, 2020 by the Human Rights Campaign Foundation. (last visited March 24, 2021).

[10] https://www.hud.gov/sites/dfiles/FHEO/documents/WordenMemoEO13988FHActImplementation.pdf

Sustainable Landscape Practices

POLICY

Community Associations Institute (CAI) supports the ability for communities to establish rules that govern landscaping practices for common areas and exclusive use property. CAI supports communities adopting best practices recommended for sustainable landscaping and encourages association boards to fairly evaluate homeowners' requests to convert to or utilize sustainable landscaping on their exclusive use property while protecting an association's assets.

Best practices for sustainable landscaping include, but are not limited to:

- Minimizing the use of finite natural resources, especially potable water
- Avoiding the introduction of non-native, invasive plants
- Using plants compatible with the native flora and fauna of an area
- Reducing erosion, pollution, wildfire danger, and other potential adverse effects
- Incorporating aesthetic components that maintain or increase property values
- Utilizing reclaimed and tertiary water for alternative irrigation

BACKGROUND

Well maintained, attractive landscaping and a pleasant environment are essential to the quality of life in any community. Aesthetics is a key component in the desirability of a neighborhood and the value of its individual homes.

Conserving fresh, clean water is important. The United States Geological Survey reports roughly one-third of all water in the U.S. goes to irrigation and landscaping. Homeowners and communities can reduce water use significantly by adopting sustainable landscaping practices that reduce water consumption and the demands on public or private water supplies.

Community association boards are responsible for effectively communicating the community's landscaping covenants that the residents are responsible for maintaining.

RECOMMENDATION

CAI supports legislation that recognizes the core principle of self-governance and co-ownership of common property of the community association housing model. CAI supports legislation that permits the association to enact reasonable rules and regulations concerning landscaping requirements.

Community associations must maintain the ability to impose a monetary penalty for noncompliance with landscaping covenants; however, the associations should refrain from imposing penalties on owners for failing to water during a government-declared drought. Water-use policies should focus on proven ways to reduce the need for watering landscaping, while maintaining the level of aesthetics valued by the community.

Further, community associations should not adopt rules explicitly prohibiting xeriscaping or the use of drought-tolerant vegetative landscapes. Association guidelines should provide an accessible means for owners to seek landscaping variances and committees or boards are encouraged to approve common sense requests that also maintain aesthetic standards. Covenants should also provide for adjustment during times of drought and protect homeowners who implement sustainable practices from adverse policy changes.

Sustainable landscaping practices are encouraged. Especially in geographic areas with desert-like topography or prone to drought, community associations are encouraged to evaluate the amount of water used to sustain the landscaping. Associations, boards and managers should use this review to develop guidelines for maintaining the community's common areas, and to guide individual property owners in their landscaping choices that benefit the association's responsibility to enhance property values. Guidelines should encourage the use of indigenous plant species, alternative water sources, including reclaimed and tertiary water, when available.

Approved by the Government & Public Affairs Committee April 23, 2019
Adopted by the Board of Trustees May 15, 2019

Community Associations *and the* Board's Fiduciary Responsibility

By **Brian J. Devost, M.S.Ed, CMCA, AMS, PCAM,** *Community First Management*

When an owner in good standing is elected to serve the Board, within their Association, they become what is referred to as a "fiduciary" and subsequently expected to take-on greater "responsibility".

Collectively, the term "Fiduciary Responsibility" is intended to describe a person with a strong sense of accountability and/or someone who is entrusted to serve (both legally and ethically) in the member's best interest.

The Department of Professional & Occupational Regulations goes on to define accountability in terms of "upholding compliance" with State laws and regulations that protect the public. From this perspective, the Boards duty to act with care and loyalty is inextricably tied to their legal obligation.

As defined in the governing documents, Boards are ultimately responsible for upholding and establishing procedures that further enrich the quality of community life. To effectively reach this goal, Boards are guided by two important concepts.

Duty of Care

First, is the "duty of care". This concept is in place to remind Boards that performing their role diligently and to the best of their ability is paramount. At a minimum, Boards should be attending meetings, vetting vendor contracts, reviewing reports, and asking questions that will propel their strategic future plans.

To reach a satisfactory level of success, Board members also need to become familiar with their governing documents, state statutes, and seek-out professionals who can help make an informed decision. Moreover, a duty of care is likened to practicing due diligence and further demonstrates prudence and sound business judgment.

Duty of Loyalty

The second concept is the "duty of loyalty" which necessitates acting in the best interests of the Association. Essentially, it is in place to prevent Boards from using their position to profit (directly or indirectly) from business dealings. For example, when a Board member has a vested interest in a product or service that is under consideration, it is considered a conflict of interest and their input or recommendation should not be considered. Instead, under the premise of "loyalty" that Board member should fully disclose their conflict and recuse themselves from discussing the matter and taking part in the vote.

Additionally, eliminating legal liability requires a Board to avoid any appearance of a conflict of interest. Things like accepting gifts from vendors, selective enforcement of the rules, employing relatives, or receiving preferential treatment can all imply culpability in a court of law.

Protecting a member's confidentiality is yet another fiduciary responsibility that should be underscored. Issues related to delinquencies, disciplinary action, or personnel matters are protected by privacy laws and should never be discussed outside of an executive session.

The court system fully understands that Board members are entrusted to make decisions that are in the best interest of their Association. In this way, the expectation is that all decisions will be made in good faith and with reasonable inquiry. However, without a strong emphasis on care and loyalty, the "business judgment rule", put in place to shield Board members from unintended consequences, will not absolve a group of volunteers if basic fiduciary responsibilities are neglected.

Duty to Act

Supplementing to the duty of care and loyalty is the duty to act. Often overlooked, this duty requires a Board to make decisions collectively and to avoid taking action without the consent and authority of the entire Board to do so.

In the end, good Board of Directors can be measured by their overall accomplishments. However, great Boards are measured by their ability to transcend a duty of care, loyalty, fairness, and good faith in ways that build trust and harmony within their community.

Brian Devost is a senior manager with Community First Management. He holds the CMCA and AMS credentials, and recently completed his PCAM designation. He is a new memmber of SEVA-CAI's Programs Committee, and shares with them his desire to further enhance learning experiences and proficiencies for all professionals.

A Guide to Changing Your Management Company

By **Michael A. Inman, Esq.**, *Inman & Strickler, PLC*

There can come a time when an association decides to consider ending the relationship with the association's management company. This generally occurs when there has been friction and/or frustration experienced by the board in dealing with its current management. Regardless of the reason, if you are a member of the association's board of directors this can be a difficult time. Transitions generally go a lot smoother for the three involved parties - the association, the in-coming management firm and the out-going management firm - if everyone observes these six basic principles articulated by W. Stephen Castle, a former president of a professional association management firm and former President of Community Associations Institute (CAI):

Principle # 1: *Try Fixing First*

An association or management firm can decide to end their relationship before it should end. Both parties should always try to resolve any differences before making a decision to terminate the management contract. If the issues are over the service or staff being provided, then the current management firm should be allowed time to evaluate the complaints and respond. If the management company is being asked to provide more services or expend more resources than anticipated in the original contract, then the board should consider adjusting its expectations or work to restructure the contract terms. Bear in mind that the process of transition will not be quick and problem free so it is best to be sure it is necessary.

Principle # 2: *Allow Ample Time*

One of the most important principles is allowing sufficient time for the transition to the new management firm. You want the new firm to have the opportunity to begin service effectively and this can take more time than anticipated between the date you execute the new management contract and their first service day. The board also needs time for this process to work. Adherence to an artificial deadline could cause frustration for all concerned. There are operational and policy matters that need to be addressed by the board and the new management firm. Meeting dates, maintenance priorities, assessment invoicing, communications with residents and records storage are just a few of the other matters that require decisions to be made during this transition to the new company.

Principle # 3: *The Association Owns The Records*

This is a simple but absolute principle that all parties need to acknowledge - the association owns the records in the possession of the management company. The board should be sufficiently involved to make sure that those items move smoothly to the new company. You should ask that a receipt itemizing all of the items being turned over is signed by all parties as part of that process.

Things become more complicated when separating association related information from a management company's computer system. At a minimum, the out-going firm should provide the new manager basic homeowner information for their use. Other historical data maintained electronically in the departing company's system such as work orders, architectural review, or correspondence might not be as easily transferable due to limitations with one of the two systems involved. If the out-going firm cannot provide these documents to the new firm electronically, the in-coming firm must receive hard copies of these documents.

Principle # 4: *Establish and Follow an Agreed Schedule*

The board should be certain that a schedule of the transition tasks is prepared with realistic target dates and is agreed upon by both management firms. Some of the key transition activities are: financial/banking transition; organizing homeowner data, transition communications to vendors, a site visit with the out-going management firm representative and arranging for a review or audit by the association's CPA.

Principle # 5: *Follow the Money*

Another concern for the board involves the association funds. Once the board has determined that a change in management firms is going to take place it should evaluate where all of its funds are deposited or invested and who has control over those funds. It is unreasonable to restrict the departing firm in its routine payment of association expenses. If the board has some concern about the payment to a specific vendor, work out that concern with the out-going management company.

Principle # 6: *Communicate Frequently*

As with any significant situation involving your association, it is essential for both management firms and the board to be certain all parties are in frequent communication. The board should communicate early with association-employed staff as to any impact on them. Monitor the progress of the turnover schedule and follow-up accordingly. It is also very important to keep homeowners apprised of the changes that are coming and what they can expect.

While every community and situation is unique, following these six principles will go a long way in assuring a more efficient and effective transfer of management responsibility and records from one management company to another.

Mike Inman has been practicing law in the Hampton Roads area for over 40 years, primarily in the areas of real estate, business and community association law. Mr. Inman is an active member of SEVA-CAI, and was a member of the Legislative Action Committee for over 15 years.

Assessment Collections

When Bankruptcy Strikes

By **Tiago Duncan Bezerra**, *MercerTrigiani*

Assessments are the primary funding source for common interest community associations. If owners do not pay assessments, an association may not have sufficient funds to provide services and fulfill obligations for the benefit of community residents. But without fail, there is (almost) always at least one account that is not current and requires the governing board to take action.

In most cases, a delinquent owner can be encouraged to pay before the account is referred to legal counsel – if permitted by recorded governing documents, the possibility of suspension of parking or amenity privileges (i.e. the pool) is reason enough to bring the account current. Sometimes though, legal action becomes necessary; eventually, after incurring related expenses and consistent communication and application of proven strategies from legal counsel, unpaid assessments and court-awarded attorneys' fees and costs are collected. Rarer still is the decision of a delinquent owner challenged and burdened by debt to file for bankruptcy protection.

As characterized by the Supreme Court of the United States, bankruptcy "gives to the honest but unfortunate debtor…a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). Through a bankruptcy discharge, debtors are personally released from debts to gain a fresh start. But what about the creditors, such as community associations, who lose the ability to collect money rightfully owed to them? What can a community association do to protect association interests in the unpaid amounts? The answer is – as lawyers are apt to say – *it depends.*

Bankruptcy Tips

#1
Secure the assessment.

#2
Stay on top of the bankruptcy.

#3
Be patient.

Before diving into the depths of bankruptcy, it is first critical to understand the nature of the obligation to pay assessments. The requirement that owners pay assessments is based in *contract*, specifically the recorded governing documents of the community association – the declaration for a property owners' association and the condominium instruments for a condominium unit owners' association. The assessment obligation runs against the property owned by the owner (*in rem*) as well against the owner personally (*in personam*). In other words, assessments are charged against property *and* the owner.

Secure the Assessment

In most cases, a bankruptcy discharge only releases the *personal* liability of owners – debt *secured against property* oftentimes survives discharge. This leads us to **Tip #1 – Secure the Assessment!** In Virginia, unpaid assessments can be secured against property in two ways: recordation of an assessment lien and recordation of a judgment to create a judgment lien.

Recording an assessment lien requires fewer steps and is prescribed by statute – Section 55.1-1833 of the Virginia Property Owners' Association Act and Section 55.1-1966 of the Virginia Condominium Act. Step 1 – Association legal counsel prepares the lien. Step 2 – The principal officer of the association signs the lien. Step 3 – Association legal counsel records the lien. There are several pivotal nuances that must be followed. For example, for condominium communities, liens may only secure assessments that became due within 90 days of the date the lien is recorded. In other words, a condominium assessment lien must be recorded by April 1 to secure unpaid assessments that became due January 1. Property owners' association liens can secure assessments due up to twelve months from the date the lien is recorded. The key to recording liens timely is development of a process and, where permitted by recorded documents, use of acceleration authority – so only one lien may be recorded each year.

A judgment lien first requires a judgment – a judgment is an order entered by the court determining that an owner is responsible for an established amount of unpaid assessments (and late fees where permitted) in addition to an award of court costs and reasonable attorneys' fees. Judgments may be entered quickly, like when a delinquent owner does not appear in court or contest the debt, or may be delayed several months if trial is necessary. Either way, once a judgment is entered and becomes final (i.e. the appeal period passes), an abstract of the judgment can be requested from the court and recorded among land records. Recording the judgment operates as a lien against all property owned by the judgment debtor in the jurisdiction the judgment is recorded – here is a suggestion: record the judgment in *every* jurisdiction in which the judgment debtor owns real estate.

Account Statements

Account statements should be:

- Clear
- Accurate
- Only include charges supported by the governing documents or applicable law

Account statements should identify:

- The owner name
- The property address
- The mailing address, if different from the property address
- All charges to the account, including
    - A description of each charge *(i.e., assessment, violation charge, late fee)*
    - The date each charge became due
- All payments made by the owner

Stay on Top of the Bankruptcy

So, with unpaid assessments secured against the owner personally (by judgment) and the property (by judgment and assessment lien), community associations should implement **Tip #2 – Stay on top of the bankruptcy!** The type of bankruptcy chosen by the owner will dictate how much work an association must do to protect its interests. In Chapter 7 bankruptcy, the debtor's assets are *liquidated* and a discharge is often entered quickly – oftentimes within months of the initial filing. Because the debtor's principal address may be considered exempt from the bankruptcy estate, many bankruptcy debtors residing in community associations receive a personal Chapter 7 discharge from all assessments that became due prior to the date the petition was filed (a.k.a pre-petition debt). But, if the owner keeps the property, the owner will remain responsible for paying assessments that become due after the date the petition was filed (a.k.a post-petition debt). Most likely, all *perfected* liens will remain against property – the exception is if a lien is specifically *avoided* during bankruptcy proceedings (usually in Chapter 13 filings).

Chapter 13 bankruptcy, also referred to as individual re-organization, is much more time-intensive and can last from three to five years. In Chapter 13 bankruptcy, debtors propose a *plan* to pay creditors in exchange for a discharge of all remaining debts – money paid into the plan by the debtor is prioritized, in most cases based on whether the debt is *secured*. Each creditor, including the

Assessment Collection Policy

- Confirm authority to charge assessments, late fees, and violation and other charges.
- Establish when late fees are charged and the amount of the late fee.
- Establish clear timeline for collection procedures:
    - Must be consistent with governing documents and community association statutes
    - Ensure liens are recorded within the statutory period
    - Avoid overcomplicating the process
- Establish a clear timely for referral of delinquent accounts to legal counsel.
- Establish parameters for owners to propose payment plans to resolve delinquencies.
- Tailor the policy to the association – taking into account assessment amount, authority and payment schedule (i.e., assessments paid monthly, quarterly or annually)

community association, may object to a plan if the plan does not accurately reflect the nature of the amounts owed. Once a plan is approved, the debtor must stay current in making plan payments *in addition* to paying all post-petition debt. So, if an owner in bankruptcy fails to pay current assessments, the owner may be in default of the plan and the bankruptcy may be dismissed. Ensuring post-petition assessments are paid an easy way to maintain leverage over an owner in Chapter 13 bankruptcy who is relying on completing the plan successfully to obtain a discharge.

Be Patient

The final tip – **Tip #3 – Be patient.** Debtors who file for bankruptcy are often in crisis and do so as a last resort – because bankruptcy has a long-lasting, negative impact on a person's financial record. Particularly for owners who retain the house in the community, filing for bankruptcy requires debtors to do some soul searching and reprioritization. In many cases, owners get back on their feet, and following bankruptcy become regular payors of assessments. Associations should budget Bad Debt Expenses each year, to account for the possibility that some assessments may not be paid by owners – as would be the case if a bankruptcy discharge is entered. So, try not to get frustrated and allow the process to play out, rely on legal counsel to provide guidance, and be thankful for your own financial health.

Tiago Bezerra is an associate with MercerTrigiani and is a member of the Board of Directors of the Washington Metropolitan Chapter of CAI. In addition to serving on the Board, Tiago supports the Virginia Legislative Action Committee and is a member of the Virginia and District of Columbia Legislative Committees. Tiago enjoys teaching and makes frequent contributions to CAI publications and speaks whenever the opportunity arises.

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Virginia Sets Example for Fair HOA Solar Policy

By **Kelsey Misbrener**, *Solar Power World*

Residential solar contractors encounter plenty of speed bumps in the process from sales to installation, whether that's tire-kickers, financing issues or logistical delays. Working with a client who lives in a homeowners association (HOA) subdivision could cost installers much more time and money. In the worst-case scenario, it can even lead to cancelled contracts.

Residential solar advocacy group Solar United Neighbors (SUN) works to solve HOA roadblocks to solar installations through grassroots organizing and policy efforts. Ben Delman, communications director for SUN, said the best way to increase solar access for HOA residents is by pushing for laws that clearly define what rights solar homeowners have.

"It's very much a state-by-state issue," Delman said. "Many states have laws that protect solar homeowner rights with respect to HOAs. For the ones that don't, it can be a real barrier."

According to the Community Associations Institute, 27 states have legislation in place that protects solar access for HOA residents. Delman said the best example of this type of law is Virginia's HB 414/SB 504, which was signed by Gov. Ralph Northam in March 2020.

Virginia's bill improved upon prior bills in the state addressing HOAs and solar power. Previous bills stated HOAs could not impose unreasonable restrictions upon homeowners wishing to go solar, but didn't define what "unreasonable" meant. HB 414/SB 504 clearly defined "unreasonable" as either "increasing the cost of installation of the solar energy collection device by 5% over the projected cost of the initially proposed installation" or "reducing the energy production by

the solar energy collection device by 10% below the projected energy production of the initially proposed installation."

In order to prove these percentages, the law requires homeowners to "provide documentation prepared by an independent solar panel design specialist that is satisfactory to the community association to show that the restriction is not reasonable according to the criteria established in the bill."

Documentation is only required if the HOA denies a solar proposal. Virginia-based installation company Ipsun Solar has found a clever way to reduce costs for this additional step in the install process. Ipsun talked to fellow NABCEP-certified solar contractors and agreed to sign off on each other's documentation.

"I was surprised by how fast we just all called each other, like 'frenemies,'" said Herve Billiet, CEO of Ipsun Solar. "Our mission is to fight climate change by installing as many solar panels as we can. So if I'm helping one of my competitors in an area of Virginia where we are not installing anytime soon, if he can get more solar installed, it accomplishes our mission too."

Although the bill can create additional paperwork and lengthen the installation timeline, it gives contractors the legal backing to push a project to completion that wouldn't have been possible before.

Overall, Virginia contractors said they haven't had too much trouble with HOAs in general.

"In years being in business, I can count on one hand how many times we've had actual big problems where we just give up. Maybe two hands. So it's not bad compared to the hundreds upon hundreds of all the installations that we've done," Billiet said.

Nova Solar CEO Barklie Estes said his company doesn't have many issues with HOAs either.

"The new law has helped us in a couple instances. However, there are still instances where HOAs won't allow solar or certain placement of solar irrespective of the new laws," Estes said.

Sometimes, even if companies go through the process to prove the restrictions are unreasonable, the HOA still won't allow it to move forward. If the homeowner wants it enough, they can choose to lawyer up and fight the restrictions in court. But occasionally, because of a unique Virginia constitutional provision, their efforts will still be futile.

Virginia's constitution says the state legislature cannot, through subsequently enacted legislation, modify existing contracts. The only exception to that provision is federal law, according to Pia Trigiani, partner at real estate law firm MercerTrigiani, who focuses exclusively on community association law in Virginia.

When a housing developer creates an HOA community, they draw up a declaration that becomes part of the chain of title. When a person buys a lot in a community that has a declaration of covenants, conditions and restrictions, they are then subject to those limitations on their rights to use the property. The restrictive covenant is a contract, so if it says homeowners may not install solar, the new pro-solar law does not apply, per Virginia's constitution.

"When you buy a property subject to restrictive covenants, you've got to read it. If solar panels are something you're interested in, then don't buy a home that says, 'No,'" Trigiani said.

An earlier Virginia statute regarding solar and HOAs makes it easier for potential buyers to know if their property is solar-friendly. That law requires developers to disclose any limitation on solar panels to the buyers.

"We're not going to tell a developer he can or cannot do anything in his restrictive covenants about solar panels, but by golly, he should be disclosing it," Trigiani said.

Restrictive covenants are not easily changed and typically require a super-majority of homeowners to do so. A person who really wants solar on their home should avoid any HOAs with anti-solar covenants.

"People have choices. Read the documents. I think a lot of folks don't, and then they beg for forgiveness. And that's when it gets ugly," Trigiani said.

Virginia's new HOA solar law really applies to HOA design guidelines, which are not contractual. If an HOA without a restrictive covenant against solar denies a homeowner's project outright or tells them they must install the panels in a certain place on the roof, the homeowner can then go through the documentation process to prove the HOA's design guidelines are unreasonable because they either increase installation cost by 5% or reduce energy production by 10%.

Although there's now some recourse in instances, Trigiani urged solar contractors to do their homework ahead of time for customers in HOA neighborhoods.

"When you're working with a customer, the first thing you do is ask them to get a copy of the restrictive covenants that apply to their property, and the design guidelines," she said. "Before they invest a minute of engineering time, they really need to know."

Nova Solar does not do this upfront research because Estes said it's not easy to find the rules for most HOAs.

"If a customer signs and we end up being unable to get the required approvals, we will refund their money and release them from the contract," he said.

Ipsun Solar also usually sells the solar project first and then looks into the HOA requirements later.

"They can take a lot of time, so it doesn't make much sense for us to do all the work with the HOAs if we don't have a signed agreement in place," Billiet said. "Sometimes, people know about their HOAs, they've done their research and can tell us during the sale process what their HOA requires."

When Billiet has reviewed older HOA covenants, he's found sometimes the "solar generation" they prohibit seems to describe either solar thermal systems or PV installation practices of the past, which are much less discreet than current systems.

Billiet said public perception of solar PV should be improved to ensure anti-solar provisions aren't included in HOA declarations. He thinks people too often see outdated stock photos of residential solar installations and think they're still bulky and blue.

"There's that one picture that irritates me that I keep seeing in all those magazines, it must be like a stock image, of a home with a solar panel really sticking out above the roof," he said. "So much is wrong on that picture when you look into it. The solar panels don't even fit onto the eave and things are just wrong, but yet everybody uses that picture."

If the public is instead exposed to the all-black, flush rooftop installations of today, Billiet thinks HOA acceptance could also evolve. Trigiani agrees.

"One of the primary functions of common-interest communities is regulating the appearance of property, and not just because it's beautiful, but if it's well maintained," Trigiani said. "The solar panel industry's done a great job of refining their product, and I think it's only going to get better."

Kelsey Misbrener is a senior editor for Solar Power World, covering inverters, policy, software, and more. She can be reached at kmisbrener@wtwhmedia.com

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