

CAI - LI Chapter News

Serving Long Island, New York

Published by the Long Island Chapter of CAI

Issue No. 18 – Autumn 2012



A TIME TO BE THANKFUL

By FRANK SOCCI, JR. CPM®, CAI-LI CHAPTER PRESIDENT FOR 2012

As the holiday season creeps upon us, it's hard to find the accustomed joy that follows the month of October, as the entire east coast has been left to pick up the pieces after the wrath of Hurricane Sandy. For those that have suffered damage to their homes, cars, or personal possessions, loss of power and the majority of us that endured the grueling task of trying to find the shortest gas line, nothing compares to the loss of life. Everyone, no matter how dim the light may appear at the end of the tunnel at times, should be thankful for life – the ability to move on from a catastrophe and rebuild. I never thought I would find myself amongst the people that are able to recount a horror story from a natural disaster, but I am, and it has put everything into perspective for me and I hope it will for you as well.

On the Sunday prior to the storm, my two sons, my friend John Filipowicz, his son John Jr., and I attended the Jets vs. Dolphins football game at Giants Stadium in New Jersey, something we have done for nearly fifteen years. As if the terrible loss to the Miami Dolphins wasn't enough, we continued our complaining about the defeat in the parking lot, hugged one another goodbye,

and wished each other luck with the impending storm. Two days later I received a phone call that my good friend John and his son John Jr. tragically died during the storm. Who would have ever thought that one could consider themselves 'lucky' after experiencing what some have called the storm of the century. I was lucky, I survived.

In the days subsequent to the storm, my company has fielded hundreds of phone calls from residents that live in some of our managed properties that were directly hit by the storm. Fortunately, most of our communities have been working together, not against one another, to rise above the devastation and move forward. Although the future may seem grim for some, we tell our displaced residents that as long as they're okay and their families are okay, everything will be repaired and they will be able to go home soon.

If this storm has taught me anything, as I'm sure it has for many others, power comes back, gas lines diminish, and foundations can be rebuilt. With the holiday's rounding the corner we all have a lot to be thankful for, and the time that can be spent with family and friends is always the most precious time. ■

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THE COMMUNITY ASSOCIATION INSURANCE PUZZLE

WHAT THE BOARD MUST DO AND MUST AVOID TO ASSEMBLE THE PUZZLE

By JOEL MESKIN, ESQ., CIRMS, VICE PRESIDENT - MCGOWAN PROGRAM ADMINISTRATORS

A key obligation of the association board is to protect the assets of the association. One of the primary elements of this responsibility is insurance, but many volunteer board members have limited experience with insurance. They're only familiar with purchasing personal auto, home and life insurance. Most know the limits and the price, but few really take the opportunity to understand coverage until they have an uncovered loss. Many are swayed in their insurance shopping because they are "in good hands" or are protected by "good neighbors." Once volunteer board members are elected, however, many become intimidated by insurance. This article will help demystify insurance and provide a better understanding of the association's needs and provide some tools that are useful to use to carry out this obligation.

Why a Community Association?

Most individuals chose to live in a mandatory community association to protect their two greatest assets, their home and their lifestyle. Homeowners believe that the community association can better protect these assets than they could do as individuals.

How Does the Association Protect Assets?

First, the association is normally a legal entity. Second, it must (if a legal entity, and should regardless) have bylaws which serve as the operating manual for the association. Third, the declaration of covenants, conditions and restrictions set forth the rules and restrictions created to preserve the association's assets. Next, the association needs a management team which in the normal course is a board of directors and finally, the association needs the funds to enable the board to manage.

How Does the Board Determine the Cost of Management?

This is done by the development of a budget. The first step should and often is a reserve study which is the cornerstone to an association's preservation. This is the heart through which the life blood of the association pumps.

Some associations do not have a reserve study contending they are too small or cannot afford it, and others have other infrastructures set in place which may incorporate the benefits that a reserve study would provide. The key is to know what exists, what is necessary to maintain it and how much that will cost. At the end of the day, association members need to plan in order to avoid surprises.

How Does the Association Cover Non-Budgeted Costs?

There are really only two ways to cover non-budgeted costs. The budgeted costs are funded by general fees and assessments. No matter what association you live in and no matter how well you manage the association, "stuff" happens and non-budgeted costs and expenses will arise. This will manifest either as a repair or improvement that is required before its expected time or the result of a loss or casualty. These unexpected costs are covered either by insurance (if insurable) or a special assessment.

What is the Board's Obligation?

In most states, the association has a "fiduciary" obligation and in other states, some statutes may only place a duty of ordinary care on the board. The fiduciary duty includes the duty of loyalty and the duty of care. The duty of loyalty requires that the board put the interests of the association above their own and disclose and avoid any conflicts of interest. The duty of care requires the exercise of the care, diligence and skill that an ordinary, prudent person would exhibit under similar circumstances. This means, at a minimum, paying attention to the substantive matters brought before the board, attending meetings, asking questions, challenging assumptions, following up on issues that may not have been resolved, consulting with experts if needed, reading and understanding materials and reports given to the board. Accordingly, the board cannot delegate the task of obtaining the appropriate insurance for the association.

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To Understand Insurance is to Know Claims

To understand what types of insurance an association needs requires the board to know what type of claims, losses, accidents and exposures that an association may encounter. To know the nature of community association risk is key to exercising its obligation. Some common claims include:

- Election dispute claim
- Economic loss claim for wrongful eviction of unit owner's tenant
- Demand by unit owner to compel association to purchase flood insurance
- Building fire due to a barbeque grill on a balcony
- Discrimination claims
- Bodily injury and medical costs for slip and fall on the common area
- Property damage claim due to the improper calibration of the security gate
- Challenge to Architectural Review Committee decision
- Challenge to board rule requiring dog owners submit their pet's DNA

- Emotional distress damages due to discriminatory application of rules
- Water damage claim from faulty washing machine hoses
- City demand to remove diseased trees that the association's arborist claim are healthy

What Does It Mean for the Board to Shop for Insurance?

First, what it does not mean to shop insurance. Recently, while I was at a local association trade show, I asked a board president if he would like to discuss insurance. He said no, because that is what they pay the community management to do. I doubt he will give that answer again. Delegation of the insurance responsibility to a non-insurance professional may itself be a breach of the board's duty. Yes, the board can consult experts, but it cannot delegate the task. It should be noted that most management agreements require that the association indemnify the management company if it is sued. Therefore, if



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The management company, which is typically not a licensed insurance professional, makes a mistake, it is not accountable to the association. For management companies, they should not be assuming that responsibility as their errors and omissions policy in most cases expressly excludes claims arising out of insurance issues.

PUZZLE PIECE NO. 1

MUST DO - Find an Insurance Professional That Specializes in Community Associations

Most people do not hire a real estate attorney to handle a medical malpractice case or hire a cardiologist to perform knee surgery. Why then would a board hire an insurance professional who does not specialize in community association insurance? Unfortunately, there is no short cut and if the board members do not want to do their homework, they should resign from the board. What they need to do is find an insurance professional who has a proven track record. Get responses to the following in writing, the hesitation to do so should raise a flag.

- How many associations have they insured?
- How many management companies do they work with?
- Do they participate in CAI?
- Have they asked to review the governing documents?
- Have they asked to review your reserve study?
- Have they asked about appraisals?
- Have they explained how each policy works?
- Have they requested to personally meet with the board?
- Have they offered to bring in other insurance specialists?

MUST AVOID: Point of Sale Price

Community associations are budget driven entities. However, boards should not look at the bottom line while wearing blinders. "Stuff" happens and there are casualties, hazards and accidents that happen that a reasonable person cannot always anticipate. This is why the association purchases insurance. In the insurance world, like in many purchasing opportunities, you get what you pay for; this is not an absolute, but a rule of thumb. Insurance carriers do not give you something for free. Accordingly, if one policy is materially less, there is a reason.

I once received a phone call from an association president, who was also a very successful attorney. She said an insurance agent told the board that he would give them higher limits for a lower premium. That was in fact true. Unfortunately, the higher limits came with coverage restrictions. The good news was they saved \$400. The bad news was they incurred over \$100,000 in defense costs for claims the new policy did not cover.

PUZZLE PIECE NO. 2


MUST DO: Understand The Puzzle

The board must endeavor to understand the association's insurance requirements. First, the association must know what types of insurance and limits are required by the governing documents? Second, are there statutory requirements that differ from the governing documents? Third, has the board done an audit of the common elements of the association knowing what needs to be insured and what does not? Fourth, has the board done an audit on the potential liability exposure of the association? Fifth, do you have current valuations of the common elements? Finally, are any association members doing things that increase potential liability for the association? Such as Neighborhood Watch, swimming lessons in the community pool or pee wee football practice on common elements.

MUST AVOID: Inappropriate Delegation

The board must not delegate the insurance responsibility to anyone else. Yes, the board can delegate some research, the setting up of meetings and clerical issues, but it cannot delegate its duty to review, ask questions and due diligence necessary to understand insurance.

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QUICK TIP from Outstanding Plumbing

Unblock a Sink Drain

A clogged sink drain is one of the most common plumbing problems. It is also one of the easiest DIY jobs.

In case of bathroom sinks the job may be as simple as pulling the pop-up plug out. Often hair, grease and cosmetics will bunch up on the pop-up shaft and block the sink. If you pull the pop-up out and it is clean the project becomes a bit more involved, but not much more. The following information can be applied to both bathroom and kitchen sinks.

Difficulty: Average **Time required:** 10-15 minutes

Here's How: When plunging a double-basin kitchen sink block up one side. Similarly, when plunging a bathroom sink make sure to plug up the over-flow. This can be done by inserting a wet rag into it. Thrust the plunger in even up and down motion. The pressure going up is just as important as that of going down.

If you are having difficulty getting a good seal between the plunger cup and sink basin, apply some petroleum jelly around the cup. If plunging does not push the clog into the main stack then you will have to snake out the drain line. ■

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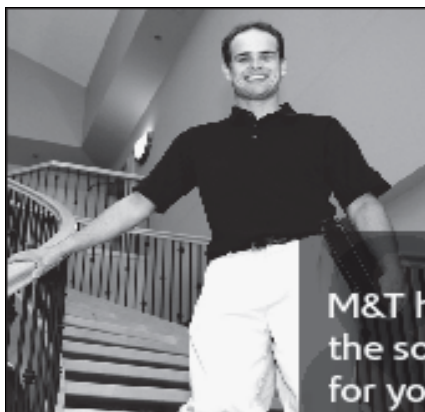


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Continued from Page 5


The Insurance Puzzle

The board must review the entire insurance puzzle, there is no short cut. The only short cut is the use of a community association insurance specialist. The details of the puzzle will not be explored in depth in this article, but the following are the general types of insurance that may or may not be required for your association. Each puzzle piece has key corresponding questions -

- Property Coverage
- General Liability Coverage
- Directors & Officers Liability/Employment Liability Insurance
- Fidelity/Crime Insurance
- Umbrella Liability Insurance
- Workers Compensation
- Windstorm/Earthquake/Flood
- Fiduciary Coverage\Unit Owner Insurance Needs
 - Single Family Homeowner policy
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Conclusion

There is no short cut. Do your homework. ■



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Community Spotlight

Meet CAI – Long Island’s Business Partner of the Year John Ryley of Dryer Vent Wizard

John has an extensive background in both franchising and dealership development. Prior to embarking in the Dryer Vent business, he was a real estate broker and owned two other franchises. After stumbling upon the Dryer Vent Wizard business model almost seven years ago, John was intrigued. He never knew such a business existed and decided to learn more about the vent cleaning services offered to both residential and commercial clients. So six years ago, John and his nephew Jamie opened the Long Island franchise becoming the first in New York State.



In the course of building his business, John met Edward Taylor, Esq., the founding chapter president of CAI – Long Island, and was easily convinced that joining CAI was a great way to expand his business. John has found that CAI – Long Island provides a terrific opportunity to broadcast an important message to his target audience. In talking about his business, John stated that, “We encounter many celebrities and caretakers when working on the East End. Lint is an equalizer similar to the Department of Motor Vehicles, everyone has to deal with it.”

John is an avid skier, martial artist, and really enjoys fishing in his spare time. As you all know, he attends every CAI – Long Island event, has gone above and beyond supporting our local chapter, and was recently named the winner of the 2012 Business Partner of the Year Award at the CAI – Long Island Annual Trade Show held at the Huntington Hilton on October 20th. ■

Do you know someone to feature in the “Community Spotlight” column? Submit your suggestion via email to info@cai-li.org.

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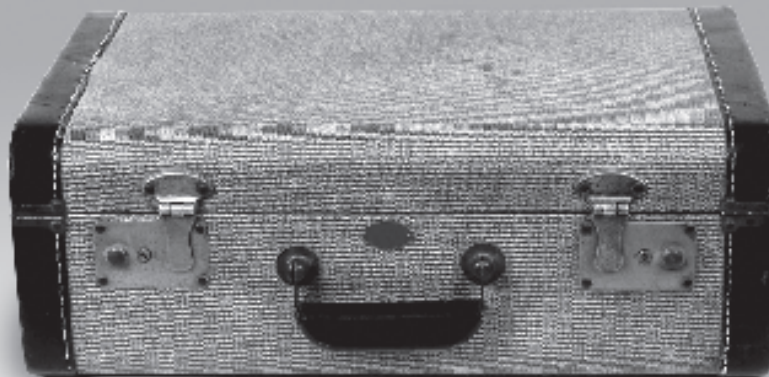
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THE 2012 CAI - LONG ISLAND TRADE SHOW

By PETER J. DUMELLE, VICE PRESIDENT OF BUSINESS AND PROFESSIONAL BANKING - M&T BANK

CAI - Long Island had its most successful Trade Show with over 150 Board Members from 54 different communities in attendance, representing a better than 50% increase from 2011. Once again, all vendor booths were sold out forcing us to turn away additional requests. After a nice breakfast, the first two morning seminars included "Selecting the Right Vendor for Your Next Project" which was conducted by Vince Occhipinti of Precision Asset Management and "What's Wrong with Your Governing Documents? And the Fixes" by Edward Taylor, Esq. of Taylor Eldridge, P.C. The second round of morning seminars included a joint presentation by Chris Duffy from the Millennium Alliance Group and Jim Sutton of the James F. Sutton Agency on "Really Understanding Insurance." Concurrently, Woody Goldstein of MayerMeinberg, LLP addressed "The ABC's of

Financial Statements for Boards," in the second classroom.

During the lunch break, the Chapter presented the annual awards to community Board member Gene Pritz from Fairfield at St. James, vendor John Ryley from Dryer Vent Wizard, and Property Manager of the Year to Douglas Weigler from Total Community Management who is going to serve as the President of CAI - Long Island in 2013.

Afternoon seminars included "Ask the Expert" with a panel of experts — Mary Ann Cole / LI Coverage Corp.; Matt Driscoll / Community Association Banc; David Eldridge, Esq. / Taylor Eldridge, P.C.; Richard Koller / Criterium-Tauscher Cronacher PE, P.C.; Tom Lowenberg / Fuller Lowenberg & Co., CPAs and David Maxwell / Meadowbrook Contracting. The final seminar was "Sewage Treatment Plants" and was presented by Chris Weiss of H2M Engineering.

CAI Long Island is very grateful to all of the show sponsors including: Belfor Property Restoration; Capital One Bank; M&T Bank; Community Association Banc; Fuller Lowenberg, & Co. CPAs; MayerMeinberg, LLP; Schroder & Strom, LLP; Taylor Eldridge; Criterium-Tauscher Cronacher PE, P.C.; NAI Long Island; Millennium Alliance Group and The Sutton Agency. If you would like to be part of the 2013 show, please volunteer for our Trade Show Committee. We are always looking for new people and fresh ideas! ■

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our gratitude,
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is not to utter words,
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~ John F. Kennedy

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SIGNIFICANT ENERGY SAVINGS

By VINCE OCCHIPINTI — PRECISION ASSET MANAGEMENT

Seventy percent of heating systems today utilize Natural Gas. Natural Gas is always the better value, and for the foreseeable future, the better buy.

On October 1, 2011, a 400-unit cooperative development shared in a significant energy savings following a successful conversion from oil to natural gas. The Board of Directors determined the best solution was to retrofit the existing #4 fuel oil burners with dual fuel combustion burners to run on natural gas and #2 fuel oil (a lighter grade with cleaner emissions).

When the cooperative calculated what they had spent on #4 fuel oil the previous winter against what they used in gas, they saved over \$200,000 (adjusted to current fuel prices and degree days). Also, since both #6 and #4 oil burners require constant maintenance to avoid burner breakdowns, there was additional savings of \$80,000 on burner repairs plus the superintendent is no longer required to perform an intense daily preventative maintenance program.

By working in collaboration with National Grid, the Board of

Directors along with their management team was able to negotiate substantial rebates. The cooperative demonstrated that while improving energy efficiency, and taking advantage of the various incentives available for this project, it was a wise investment. Perhaps most importantly, residents are no longer inconvenienced by an unreliable heating system. Since the gas conversion there has been a drastic reduction in resident's heat complaints.

A second step taken to reduce fuel consumption was providing a more efficient system for hot water. Installation of separate hot water heaters at the cooperative allows the heating plant to be turned off during the spring and summer months, providing an additional 30% savings on the annual heating cost and saves wear and tear on the heating system itself.

Note: The expense of Natural Gas is at an all-time low, while oil prices have a tendency to rise during the heating season.

For more information, visit www.oiltogasconversion.com or www.usdepartmentofenergy.com. ■





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