

CAI - LI Chapter News

Serving Long Island, New York

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THE ROAD AHEAD

BY CAI MORTGAGE MATTERS

With a new Congress sworn in and the pageantry of President Obama's inauguration passed, CAI is moving aggressively in Washington, DC to make sure your voice is heard. The road ahead for CAI's federal affairs agenda includes fairness in disaster recovery for community associations and preparing for the central role associations will play in new federal mortgage rules.

Fairness for Community Associations

Superstorm Sandy has shown once again how community associations are treated unfairly under federal disaster recovery guidelines. CAI has heard from hundreds of members whose communities were damaged by Superstorm Sandy but who have been denied federal disaster assistance.

Local governments have helped associations only to have FEMA refuse funding to offset these expenses. Cooperatives and condominiums have been ruled ineligible for help with uninsured damages.

In each case, federal disaster assistance was refused because the damages were in a community association. Tragically, FEMA would have helped these neighborhoods and homeowners if the loss occurred in a non-association community. It is unfair that associations are told to manage disaster

recovery on their own.

CAI's call for fairness in disaster assistance was joined by other organizations and has been heard by key leaders in Congress. CAI is working with New Jersey Senator Robert Menendez to persuade FEMA to reconsider its refusal to provide disaster assistance to community associations. New York Senator Charles Schumer has called on the federal government to provide grants to cooperatives and condominiums to help with disaster recovery.

Every CAI member can contribute to this effort by contacting their representatives in Congress to demand fair access to recovery resources for community associations. Ask your local and State officials to contact FEMA and urge that community associations receive fair treatment. By joining together we can prevent community associations from having to go it alone in the next natural disaster.

Federal Mortgage Rules

In early January, the federal government released new mortgage lending guidelines. As expected, community associations will play an important role in the new mortgage approval process.

Lenders are now required to prove
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Continued from Page 1

that borrowers can make monthly principal and interest payments as well as monthly payments for insurance premiums, taxes, and association assessments. This “ability to repay” test protects borrowers and communities from the dangers of predatory lending.

Community associations should be prepared to provide lenders with information about regular and special assessments. This information is a critical part of the ability to repay test.

At CAI’s request, the federal government will allow lenders to use assessment information from other sources as long as the information is reasonable reliable. For example, a lender may rely on assessment information provided by the buyer or seller rather than the association. Also, associations need only provide information on current assessments.

Federal officials understand that community associations are a growing source of housing in America. Verifying that new homeowners have the ability to pay a fair share of association costs will lead to healthier, stronger, and more stable communities across the country.

The Road Ahead

For CAI, the road ahead in 2013 involves a broader federal agenda than fairness in disaster assistance and implementing new mortgage rules. Every CAI member is vital in driving this agenda as far down the road as we can. To learn more about CAI’s federal affairs agenda and how you can help, please visit www.caionline.org or send an email to government@caionline.org. ■

Ralph LaMagna
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ASK THE EXPERT — MOLD!

By DEBORAH RASHTI, SERVPRO OF GREAT NECK/PORT WASHINGTON

Spring is officially here and the warm weather is on its way. With so many homes improperly dried by amateurs looking to make a quick buck post Sandy, it is no wonder that we will most likely see a corresponding spike in mold with the rise in temperatures.

If you suspect a mold problem, DO NOT bring in a mold remediation company without first bringing in an indoor environmentalist to do air testing who has no vested interest in the job. How many times have we seen undercover newscasters expose unscrupulous people that prey on people's naivety and fear? A professional mold remediation company will not only insist that you have an air test done; but, they will make sure that it is done by someone other than themselves.

Remember, mold can't exist without a water source, so make sure that you know where the water is coming from and that it has been resolved, before you remediate. If it can't be resolved, as is the case with ground water coming in from the high water tables, make sure that you rebuild with materials that can stand up to water infiltration like tile floors, cement walls and floor drains.

HIDDEN WATER is often the culprit when it comes to mold: water behind sheetrock and above ceilings; carpeting that feels and looks dry, but isn't. While it is expensive to bring in a water remediation specialist to clean up your flood, it is a drop in the bucket compared to what it will cost you, if it is not cleaned properly (mold is considerably more expensive to clean up depending on the square footage.) Keep in mind that contractors think "renovation" not "restoration." I can't tell you how many contractor's homes we've been assigned to (by insurance carriers) that are convinced our services are not needed until we show them where the water is hidden using infrared camera's and moisture content meters. It is truly an eye-opening experience.

If you wonder why you never heard about mold years ago, think about the "home improvements" we've made along the way: the advent of double paned windows for energy saving in the 70's kept our homes airtight (a disastrous environment if there was moisture lurking behind a wall or in a hidden cavity); lead was removed from paint in 1978 and replaced with latex which became a food source for mold; sheetrock walls, an excellent organic source of food for mold, replaced plaster after WWII; and sugar and starches in wallpaper paste literally supplied the icing on the cake for what has become a mold smorgasbord! Mold resistant products are just beginning to come on the market.

Another change that brought mold to our attention was the trend in finishing basements. Approximately 80% of mold remediation is performed "below grade." As a general rule, dehumidifiers should be plugged in once the heat is turned off for the season. It

is one of your best protectors against mold.

Remember blowing seeds off a dandelion? Well that is a good analogy for what happens to mold when it is disrupted. Once airborne, it latches onto new areas for growth. The larger the area mold encompasses, the greater the containment site needed, and the more money it will cost to remediate. As for bleach, don't think of it as a healthy solution. Not only is it toxic in high levels, but it is corrosive to wood and metal. The products used today are much more eco-friendly, but still effective.

At present, there are no laws concerning mold remediation or any rulings on the health effects of mold. Therefore, it is a hot bed for litigation and one to be avoided at all costs. Scientific testing is the best protection you can buy against being swindled and being sued. Currently, in other parts of the country, there are laws that require homeowners to disclose mold remediation as public record. New York has been resistant to this disclosure, but that may change with so many homes affected by Sandy. Scientific data showing air levels to be within acceptable ranges post remediation are about the only proof you have that stands a chance to hold up in court.

Moral of the story: DRY it right from the start. If you do have **confirmed** mold, have your job remediated by a reputable mold specialist and **have the area retested before signing off on the job.** Bottom line: Mold is nothing to sneeze at! ■

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Long Island Chapter 2013 Events

Thursday, May 16th - 6:00 p.m.

"Tools for Board Members"

*Fairfield at St. James Community Clubhouse
1 Fairfield Drive, St. James*

Wednesday, June 5th - 3:00 p.m.

"Nine & Dine" Golf Outing

*Sandpiper Nine at Spring Lake Golf Course
30 East Bartlett Road, Middle Island*

Tuesday, July 16th - 6:00 to 8:00 p.m.

"Chapter Social"

*Four Food Studio
515 Broadhollow Road, Melville*

Thursday, September 19th - 6:00 p.m.

"Friends & Family" CPR

*Capital One Bank
275 Broadhollow Road, Melville*

Saturday, October 12th - 9:00 a.m. to 3:00 p.m.

2013 Trade Show

*Huntington Hilton
598 Broadhollow Road, Melville*

Thursday thru Saturday - November 7, 8 & 9th

M-100 Class: The Essentials of Community

*Association Management
Belfor Property Restoration
60 Raynor Avenue, Ronkonkoma*

Saturday, November 9th - 8:00 a.m. to 2:00 p.m.

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PRESIDENT'S MESSAGE

By DOUGLAS WEIGLER, CAI-LI CHAPTER PRESIDENT FOR 2013

Community Associations Institute is dedicated to building better communities, provide education and resources to its communities association members, management companies, business partners and professionals who provide products and services to community associations.

Its mission is to inspire professionalism and effective leadership. **CAI-Long Island** promotes this through numerous seminars scheduled throughout the year, educational classes, the quarterly newsletter and our Annual Trade Show (this year scheduled on Saturday, October 12th at the Huntington Hilton).

Since becoming President, I have received numerous calls from Board members asking questions on how other communities handle different situations. As you may recall, on a few occasions including the last Trade Show, **CAI-Long Island** has hosted "Ask the Experts" forums for this specific purpose – questions from the audience answered right on the spot – which have been very well received.

Our current Chapter Board is comprised of property managers, community Board members, attorneys, bankers, a restoration company, insurance brokers, an accountant, and contractors. Each individual offers expertise in their field, and are very willing

to share information with our chapter membership.

If you have a question, contact me at dweigler@totalmgmt.com, or our Executive Director, Christine Majid, at info@cai-li.org. We will seek out knowledgeable individuals in the related field to provide you with information.

Just a reminder, we are seeking members for the following Chapter Committees:

- Membership/Marketing – Paul Marascia/Chairperson
pmarascia@yahoo.com
- Trade Show – David Eldridge, Esq./Chairperson
david@taylor-eldridge.com
- Website – Claudia Tracey/Chairperson
claudiatracey@optonline.net

Interested in volunteering? Please contact the chairperson to get involved. We need you... each helping hand makes us stronger!

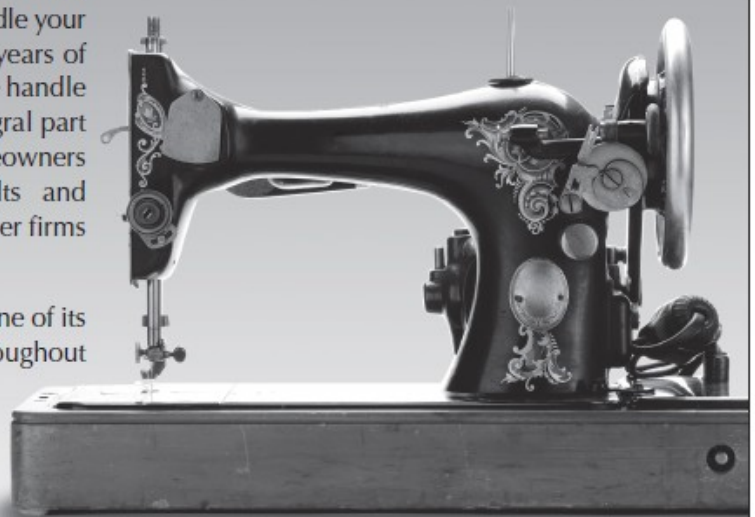
Hope to see you at our next meeting on May 16th at Fairfield at St. James, our Annual Golf Outing on June 5th, and our Summer Social on July 16th. For more information, visit the chapter website at cai-li.org. ■

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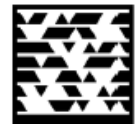
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Meet a CAI – Long Island Board Member Paul Marascia of Locust Cove

Community Spotlight

Paul grew up in Brooklyn, New York, as the son of first-generation Italian immigrants. He attended the United States Military Academy at West Point, Brooklyn College, and New York University, where he received an MBA in 1992. Paul's professional career includes founding two software companies, serving as an adjunct professor of Mathematics, school board president, baseball coach and commissioner for youth sports programs.



Currently, Paul is a Financial Advisor who loves what he does and he has been doing it at Wells Fargo Advisors for 9 years. By focusing on investment and retirement planning, Paul gets to help friends and clients reach their financial goals. Since Paul believes that there is no short-cut to investment planning, he devotes considerable time and resources to understanding all aspects of a client's financial life before making recommendations based upon each family's unique situation.

Four years ago, Paul and his wife Antoinette moved to Locust Cove, a 55+ community in Oakdale where he has served on the board for two years. In addition, Paul became interested in working with CAI after attending the Long Island Trade Show in 2011. "I was so impressed by the people I met at CAI Long Island that I knew I wanted to get involved." Not only did Paul join CAI, he currently serves on the Long Island Chapter Board.

One of the tasks Paul recently became involved in is serving as the chairman of the Marketing and Membership Committee for our Long Island Chapter. Although the committee's work is just beginning, several exciting ideas are being discussed to help promote CAI for our communities and business partners.

When not working with a client, or either of the two boards Paul serves on, he may be found strumming one of his classic guitars. "Although I only play the guitar to relax I couldn't resist writing a little song for our Locust Cove community. The song is only mediocre at best, but the reaction from our community and the friendships that it helped to generate was outstanding." ■

Do you know someone to feature in the "Community Spotlight" column?

Submit your suggestion via email to info@cai-li.org.

INDIVIDUAL BOARD MEMBER LIABILITY AFTER FLETCHER v. DAKOTA

By EDWARD M. TAYLOR, ESQ., TAYLOR ELDRIDGE, P.C.

The Dakota, one of the legendary co-operative apartment buildings in Manhattan, has long shunned attention. Its Board of Directors has allegedly even denied the purchase applications of celebrities in order to avoid the publicity that accompanies high profile residents. Ironically, instead of fame, the Dakota has been plagued by infamy, most notably by the murder of John Lennon at its doorstep, and most recently by a discrimination law suit brought by a former Board president against the Board of Directors and two individual Board members.

Alphonse Fletcher, the plaintiff in the lawsuit, purchased a unit in the Dakota 20 years ago and served as a Board member and president of the Board. In 2011, while no longer on the Board, Fletcher applied to purchase a second apartment in the building, adjacent to his unit, with the intention of combining the two apartments into one large one. The Board of Directors denied his application. According to the Board, Fletcher's financial situation at the time of the application raised legitimate questions as to whether he would be able to afford the carrying costs of both apartments.

Fletcher saw things differently. He claimed that his financial condition was beyond reproach and that the denial of his application by the Board was due to discrimination (he is African American) and retaliation (he promoted the rights of other minority and Jewish shareholders at the Dakota) by the Board and the several individual Board members.

The case has drawn wide attention in the legal community due to the issue of the liability of individual Board members. The standard for community association Board, and Board member, liability was originally established in the 1990 landmark ruling of the NYS Court of Appeals, known as Matter of Levandusky v. One Fifth Ave. Apt. Corp. The Court applied the "business judgment" rule to Board actions that were taken in good faith and in the lawful and legitimate furtherance of corporate purposes. While the business judgment rule would prohibit courts from second-guessing most Board decisions, the Court of Appeals also cautioned that the business judgment rule would not shelter Boards, and Board members, that allowed discrimination or arbitrary and malicious considerations to influence decision-making.

In a 2006 case known as Pelton v. 77 Park Avenue Condominium, the Board of Managers and its individual Board members were accused of discrimination of a disabled resident. The Appellate Division, First Department applied the business

judgment rule and found that individual board members would not be liable for a Board's discriminatory action. While the Court acknowledged that individual Board members could be held liable for discriminatory actions taken independent of the Board, they would not be subject to liability if the discriminatory steps they took were in the context of action by the Board.

In the case of Fletcher v. Dakota, Inc., the Appellate Division, First Department overruled its own decision in the Pelton case. While finding that a Board member's participation in a breach of contract by the Board did not result in individual liability, a Board member's participation in a tort (legal wrong) of the Board could indeed result in individual liability of that Board member. The defamation and retaliation claims made by Fletcher are such legal wrongs, and the Court ruled that therefore, the claims against the individual Board members would continue.

The decision of the Appellate Court in Fletcher should come as no great surprise. The seeds of the decision were sown 23 years ago in the Levandusky case. Nonetheless, while no decision has

Continued on Page 12

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Continued from Page 11

been made yet as to whether the individual directors in Fletcher are actually liable for any wrong-doing, the “damage” has been done. It has now been made eminently clear that Board members can be found individually liable when they participate or aid in discriminatory acts by a Board. And individual liability can mean compensatory and punitive damages – in other words, money out of a Board member’s pocket that will not be reimbursed by community funds or insurance coverage.

The question now needs to be asked: Should anyone volunteer to serve on a community association Board when they may be subjecting themselves to individual liability? And the answer is a resounding “YES!” Certainly, any prospective Board members who intend to use their positions to discriminate should think twice about running. But Board members whose intentions are to genuinely do what is best for the community should not be intimidated. In fact, the Fletcher decision should have been intuitive. No-one should expect discriminatory, or other improper, behavior to go unpunished just because it was undertaken while serving on a Board. But courts will still apply the business judgment rule and provide Boards and Board members with protection from mistakes or bad judgment, as long as those decisions are made “in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of [community] purposes” – which is exactly what most community association Boards have been doing all along. ■

ⁱ Fletcher v. Dakota, Inc., 99 A.D.3d 43, 948 N.Y.S.2d 263 (1st Dept. 2012)

ⁱⁱ Matter of Levandusky v. One Fifth Ave. Apt. Corp., 75 N.Y.2d 530, 554 N.Y.S.2d 807, 553 N.E.2d 1317 (1990)

ⁱⁱⁱ Pelton v. 77 Park Ave. Condominium, 38 A.D.3d 1, 825 N.Y.S.2d 28 (1st Dept. 2006)

Edward M. Taylor, Esq., a partner of Taylor Eldridge, P.C. may be reached at (631) 265-5550 or edtaylor@taylor-eldridge.com.



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