

CAI - LI Chapter News

Serving Long Island, New York

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DON'T WAIT FOR THE BANK'S FORECLOSURE!

BY BRUCE J. BERGMAN, ESQ. - PARTNER AT BERKMAN, HENOCH, PETERSON, PEDDY & FENCHEL, P.C.

When the condo is not paid charges that are due from a unit owner, there will likely also be a default on the owner's mortgage. Assuming the condo has promptly filed its lien (which is strongly recommended), common wisdom might suggest that the best path is to just allow the bank to foreclose – let *them* solve the problem, at *their* expense. Why this may not at all be the best approach – and how the condo can better protect itself – is the focus of this review.

WHY IT SEEMS LIKE A GOOD IDEA

The bank's mortgage is senior and superior so the condo will be cutoff anyway; better it seems then to let the bank spend the money and let whatever problems there may be in foreclosing be their headache. After all, when they are done, *someone* will have to start paying the common charges. If at the bank's foreclosure sale there is a third party purchaser, that person presumably will begin paying the charges. Even if the bank takes it back, they are most likely to begin paying (they are obligated to) and will eventually resell the unit to someone who is hopefully more responsible than the prior owner. So far, then, leaving it to the bank appears to be a worthy thought.

WHY IT IS REALLY NOT SO

In the face of a default, the condo can start a suit-at-law on the obligation but the money judgment may not be so readily collectible. (That is another subject for another day.)

The alternative is to file a lien which, by the way, is a *continuing* lien. That means that all charges subsequently accruing are encompassed by the lien and will have to be paid to satisfy that lien. So the condo lien could itself be foreclosed. That leads right to the question, though, of why advance the monies needed to foreclose when the bank will take care of everything in its own foreclosure.

The ultimate answer is that the bank may not proceed through its foreclosure, and if it does, it may take two, three, four or even more years to complete. All during that time the unit owner lives for free and all the other owners bear the burden of the costs that the defaulter did not pay. Or, and even more galling, the defaulting unit owner may have rented out the premises, thereby enjoying the fruits of collecting rent while paying no expenses.

If the condo has filed its own lien, the senior-

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foreclosing bank must name the condo in the bank's foreclosure. In that way, and through counsel, the bank's progress can be followed. Managers will typically be able to observe that the bank foreclosures seem to be quite lengthy – and they are. Here's why.

First, banks foreclosing a home loan must first send a 90-day notice as a condition to beginning a foreclosure action. That means three months are immediately lost no matter what anyone wants to do. Assuming the foreclosure is timely initiated by the bank (and too often they wait to start) they are under significant pressure from state and local governments as well as various regulators and public opinion to settle foreclosure cases. While this is understandable, some aspects, like forbearance agreements, require trial periods. Should there be a failure of that test, the action will have been stalled for a certain number of months before it can either be begun or continue. Should the conditions be fulfilled, and there is a mortgage modification, the foreclosure eventually

ends with no absolute assurance that the unit owner will now begin paying the condominium or homeowner's association. They may still have to be foreclosed upon by the condo to elicit that payment.

That 90-day notice that the bank had to send at the outset is *not* something that a condominium is required to do in foreclosing a common charge lien so a like time is not lost. Once a bank foreclosure begins there is yet a further mandate for a settlement conference. The procedures attendant to those conferences lead to typical delays of many months before the process is completed. This further mires the bank's foreclosure in delay.

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HURRICANE MADNESS: WHAT WILL IT TAKE FOR YOU TO PREPARE?

By DEBORAH RASHTI, SERVPRO OF GREAT NECK/PORT WASHINGTON

A hurricane typically starts out as a tropical based storm, with winds that reach speeds of 74 mph or more with torrential downpours. While Sandy did not present itself in this way, it had the most dangerous element of a hurricane: storm surge. Storm surge is a dome of ocean water that can reach 20 feet high at its peak along a coastline that can be anywhere from 50-100 miles long. Nine out of 10 hurricane fatalities are attributed to storm surge. Sandy was between 14 and 15 feet, but had it hit a couple of weeks earlier or later, when the tides would have been at their highest during the new moon, water levels could have been much higher!

New York City is no stranger to storm surge. In 1821, a hurricane caused the East River to converge into the Hudson River across lower Manhattan when 13 feet of tidewater rose in one hour and inundated wharves. The Hurricane of 1938 was a Category 3 hurricane whose eye crossed over Long Island and into New England. Its floods knocked out electrical power in all areas above 59th Street in Manhattan and in all of the Bronx (and this was with NYC experiencing the weaker "left side" of the storm!). Later on in 1954, Hurricane Carol caused major flooding in the city despite the fact that the sustained winds of over 100 mph were 40 miles east of the city. In 1960, Hurricane Donna created an 11-foot storm tide in New York Harbor that ended in extensive pier damage. Hurricane Gloria (1985) could have been catastrophic had it arrived at high tide and been just a little closer to the City. In 2011, Hurricane Irene was a precursor to Sandy causing extensive flooding damage to homes along the Atlantic, and this year we are being warned of more of the same.

Aside from heeding the advice of public officials and making sure that you refer to one of the many Emergency Preparedness Lists that are generated at this time of year, one of the most important steps you can take in preparing yourself for a Hurricane is to make sure that you understand what you are (and what you are not) covered for in your insurance. Considering the extreme weather pattern we are in, and the fact that you do not need to live by the water to have a flood, it is important to know that there is a 30-day waiting period from the time of purchase of flood insurance. Another coverage worth considering ahead of time is water back-up. Despite the \$5,000 cap applied to this claim, it is more likely to happen as our drainage systems continue to age.

An excellent use of your time is to scan all of your important documents onto a disc. This way you are covered if you lose or misplace: your passport, birth certificate, drivers license, marriage license, insurance card, titles (to your house, car, boat and/or motorcycle), social security card, and financial statements (bank, mortgage, credit card, stock & bond portfolio's, or any other important documentation that identifies you and your assets).

Advance planning, in general, is key to how you will fare after a disaster. If you take prescriptive medication, consider getting an advance on a month's supply as a precaution; and take pre-loss photographs of your insured valuables which you can archive on the same disc as your documents. Merchants may not be in a position to make change for you without electricity so now is a good time to create a stash pile for your small dollars and coins. If you have natural gas, consider getting a quote on what it would cost to put in a generator.

Having a generator for your clubhouse can provide a comfortable place for your members to weather out the storm. Either way, there are camping supplies such as a crank radio, solar/battery powered lanterns or battery operated phone chargers that are good to have on hand. A printout of phone numbers for your electrician, plumber, tree service, carpenter, roofer and emergency restoration company are essential considering how quickly they will book up. The same thing applies to insurance adjusters so make sure you have the phone number of your insurance company and broker, along with your policy numbers handy so your claim can get into the system as quickly as possible.

Many of these steps can be done once and carried over from year to year. Research shows that making preparations ahead of time can make the difference between life and death; being comfortable vs. miserable; getting back to business or not. Katrina showed us that our government cannot come to our rescue as easily as we would like. The better that we can take care of ourselves, the greater chance we have of surviving a large scale disaster. Despite it's devastation, Sandy was NOT the Category 2 Hurricane that the insurance industry has been predicting that we are in for. While we do not have a crystal ball, we do have scientific data that points to a more active Hurricane Season this year... and after Sandy, it is hoped that we

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But there are still further problems. Believing that mortgage foreclosure actions have been abused by banks, New York decreed a requirement for the lender's attorney to file an affirmation in essence attesting to the legitimacy of the action. If the attorney is to make such a sworn statement, he must speak to certain of the lender's officials and obtain for the file an appropriate affidavit to back-up the statement he must file. Because large lenders are such

bureaucracies, having the conversations and obtaining the affidavit can be exceptionally time consuming. This, too, contributes greatly to slowing down the mortgage foreclosure process. Still further, there are a host of requirements imposed upon the process – when it is a mortgage foreclosure but not a condo lien foreclosure – which readily trips up bank actions. It doesn't take much for a ministerial error to be made or for a borrower to make claims about a bank's violation of requirements. Again, this tends to greatly protract any bank mortgage foreclosure action.



With banks buried in this morass, condominiums may be dismayed to recognize that they left their own fate in the hands of strangers – the banks and their attorneys. How dedicated and skillful they are may vary and, yet, the condominium's ability to have a new owner paying common charges rests upon that ability and dedication of others. As the years are consumed, condominiums may recognize that some action on their part is necessary. What can be done to move the banks along when a condominium is in a junior position is somewhat limited and is again, a discussion for another day.

CONCLUSION

In the end, it should be apparent that not taking its own action that is foreclosing the condo lien – can be the wrong choice. While concededly any foreclosure can be subjected to delays, so many of the burdens that mortgage holders bear are *not* imposed upon condominiums and therefore the condo lien foreclosure process is almost invariably much more rapid. If the condominium completes its own foreclosure, and even if no one purchases (a function of the equity in the unit of course), the condominium will become the owner and can rent the property out and earn money during the interminable years consumed by bank foreclosures.

In sum, addressing these thoughts early may save untold funds. ■

Bruce J. Bergman is a member of the law firm of Berkman, Henoch, Peterson, Peddy & Fenchel, P.C., Garden City, New York and the author of the four-volume treatise, "*Bergman on New York Mortgage Foreclosures*," LexisNexis Matthew Bender & Co. (rev. 2013). He may be reached at b.bergman@bhpp.com.

Long Island Chapter 2013 Events

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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First week of December
Chapter Holiday Party
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 would listen.

In ending, it doesn't matter if we are having extreme weather because of global warming or not. What does matter is that we be prepared. Consider taking steps today BEFORE an emergency arises. Have all your important paperwork backed up on a disc; have all your emergency numbers printed out as a back up to your cell phone; keep your home in excellent working condition and have pictures to prove it; and invest in camping supplies that could make a huge difference to your comfort during a power outage. The likelihood is strong that we are in for more extreme storm activity whether it be from the Category 2 Hurricane, a torrential downpour that overwhelms the sewage system, or a tornado-like storm that leaves a large swath of land without power for weeks. We need to take responsibility for ourselves BEFORE disaster strikes. It can make all the difference. ■

If you would like a blank Hurricane Preparedness CD sent to your home or community for important documents, please contact our office at 516.767.9600 and they will be glad to provide one at no cost. Also, unless you have an emergency restoration provider, we suggest you add this phone number to your emergency list.



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PRESIDENT'S MESSAGE

By DOUGLAS WEIGLER, CAI-LI CHAPTER PRESIDENT FOR 2013

Community Association Institute (CAI), which is celebrating its 40th anniversary this year, was created and strives to give volunteer community leaders, as well as property managers, all of the tools necessary to make their community a happy, efficiently run, and fiscally sound community.

Based on statistics that were compiled by CAI, there are approximately 64,000,000 people living in 326,000 planned communities, comprised of approximately 166,000 homeowner associations; 150,000 condominiums, and 10,000 cooperatives. There are approximately two (2) million community Board members and approximately 60,000 property managers.

Progress will only happen if everyone works together and understands what they can do and what is required of them. In an ongoing effort to educate, CAI has published a list of rights and responsibilities for homeowners as well as community leaders. I believe it is worthwhile reprint and follows this introduction.

Before closing, I want to thank Frank Riggio, for chairing the 2nd Annual Nine and Dine Golf Outing on June 5th. Through Frank's efforts, a wonderful day was enjoyed by over 40 CAI members! Thank you Frank and all that attended. I want to thank Paul Marascia and the Membership Committee for all of

their efforts in marketing the Long Island Chapter and bringing our membership numbers to new heights. Finally, I wish to thank David Eldridge and the Trade Show Committee for their efforts in organizing our 7th annual Trade Show on October 12th at the Huntington Hilton. Hoping everyone enjoys the balance of the summer!

Rights and Responsibilities for Better Communities *Principles for Homeowners and Community Leaders*

More than a destination at the end of the day, a community is a place people want to call home and where they feel at home. This goal is best achieved when homeowners, non-owner residents and association leaders recognize and accept their rights and responsibilities. This entails striking a reasonable balance between the preferences of individual homeowners and the best interests of the community as a whole. It is with this challenge in mind that Community Associations Institute (CAI) developed Rights and Responsibilities for Better Communities. Rights and Responsibilities can serve as an important guidepost for all those involved in the community — board and committee members, community managers, homeowners and non-owner residents.

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NAI Long Island's Property Managers Receive Management Certification

Community Spotlight



Pictured above from left to right: Douglas Weigler (current 2013 President of CAI - Long Island), Christopher Alexander, CMCA (NAI Long Island) and Nancy Scoca, CMCA (NAI Long Island).

NAI Long Island property managers, Nancy Scoca and Christopher Alexander, have both been named a Certified Manager of Community Associations® (CMCA®) by the National Board of Certification for Community Association Managers. Douglas Weigler, the 2013 President of CAI - Long Island, presented Nancy and Christopher with their awards at the Long Island Chapter's May membership meeting at Fairfield at St. James Community Association, Inc. in St. James, NY.

Nancy has been a property manager for nineteen years which has included time spent with Douglas Elliman and Insignia. For the past nine years, Nancy has been with NAI Long Island where she manages residential communities and commercial properties, most notably The Lakes at East Setauket, a 314 condominium/HOA complex.

Christopher joined NAI Long Island in 2011 as a junior property manager, after graduating Florida State University. Since then, Christopher has become one of NAI's most valued property managers, managing apartments, HOA's, and condominiums, most notably The Seasons at Plainview, a 134 condominium complex.

The CMCA® is the only national certification program designed exclusively for managers of homeowner and condominium associations and cooperatives. The CMCA® recognizes individuals who have demonstrated the fundamental knowledge required to manage community associations. ■

Nancy Scoca, CMCA, a property manager at NAI Long Island, may be reached by phone at (631) 270-3023 or by email at nscoca@nailongisland.com.

Christopher Alexander, CMCA, a property manager at NAI Long Island, may be reached by phone at (631) 270-3024 or by email at calexander@nailongisland.com.

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

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SAVE ON WATER HEATING WITH LIPA'S NEW SOLAR HOT WATER REBATES

By LONG ISLAND POWER AUTHORITY (LIPA)

As a new business member of the Long Island Chapter of the Community Association Institute, LIPA is excited to partner with CAI members and communities interested in learning more about our portfolio of energy efficiency and renewable energy rebate programs. Saving money and energy has never been easier with generous rebates and incentives from LIPA for a wide array of energy efficiency improvements and renewable energy technologies like solar power.

LIPA's newest addition to its portfolio of renewable energy programs is the **Solar Hot Water Rebate Program** for residential electric customers. *Water heating is the second highest energy cost in a typical household after space heating.* A new solar hot water system can save homeowners hundreds of dollars a year in energy costs, help the environment by reducing consumption of fossil fuels and meet a household's hot water needs for the next 25 years or more. And now the many benefits of solar hot water technology are more affordable than ever... through the end of the year, LIPA is offering a new **\$500 Customer Bonus Rebate** over and above the current \$1,500 Rebate to the first 50 residential electric hot water customers who install a new solar hot water system. Eligible customers can now receive a rebate up to \$1,750 for a 1-collector system or \$2,000 for a 2-collector system AND qualify for a 25% New York State tax credit and a 30% Federal tax credit!

In addition, LIPA is also offering a **\$300 Contractor Incentive** for each new solar hot water system installed through December 31, 2013.

A **Solar Hot Water System** uses the sun to pre-heat a home's cold water supply and helps reduce the amount of conventional energy needed to heat the water. Solar hot water systems include a storage tank and solar collectors and (unlike solar Photovoltaic or PV panels) produce heat instead of electricity. A

typical system can deliver 70% or more of annual water heating needs and, in the summer months, may produce up to 100% of a household's hot water supply. Minimal roof space is required for a 1 or 2 solar collector system – a typical Long Island 4 person household will need a 2 collector system requiring about 80 square feet of roof area. Such a system heats about 25,000 gallons a year with solar energy – the equivalent of 1,000 hot showers.

Condominium communities and homeowner associations across the country have incorporated solar hot water technology by adopting 'best practices' that provide guidelines in association by-laws and allowing for solar easements between homeowners with shared roofs. Solar hot water systems are very similar in size and aesthetics to skylights which are commonplace in many townhomes and condominiums; in fact, solar hot water systems are already helping residents save energy and money in condominium communities right here on Long Island.



LIPA Solar Hot Water Installation – Bay Shore Long Island

Renewable Energy Long Island (reLI), a not-for-profit organization promoting clean, sustainable energy on Long Island, has partnered with LIPA to provide information and guidance for CAI members and organizations interested in learning more about energy efficiency and solar hot water technology. The reLI web site also includes a

pre-screened list of solar hot water contractors on Long Island at www.RenewableEnergyLongIsland.org. If you would like to schedule a **FREE efficiency and renewable energy** education seminar for your community or homeowner association, please contact Barnaby Friedman from Renewable Energy Long Island at (631) 329-8888 or via email: Barnaby@RenewableEnergyLongIsland.org.

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It's easy to apply for a new Solar Hot Water system rebate from LIPA. The program is available to residential electric customers who owned an electric hot water heating system for a minimum of 12 months and no pre-approvals are needed! Rebates are on a first come, first serve basis and customers can contact a solar installer in their area to find out if a solar hot water system is right for their home. For more information, please visit: <http://www.lipower.org/solar/> or contact LIPA's Solar Hot Water Program Manager Jennifer Rommel at jrommel@service.lipower.org. ■

Ralph LaMagna
Vice-President/Owner

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Learn more about LIPA's solar hot water systems at lipower.org/solar

* Eligible customers must currently be billed under one of the following LIPA residential billing codes in order to participate in the SHW program: Rate 183 (Water Heating); Rates 480 or 481 (Off-Peak Rate); Rates 880 or 882 (Water and Space Heating with Resistant Heat); Rates 881 or 883 (Water and Space Heating with a Heat Pump).



Continued from Page 7

Homeowners Have the Right To:

- A responsive and competent community association.
- Honest, fair and respectful treatment by community leaders and managers.
- Participate in governing the community association by attending meetings, serving on committees and standing for election.
- Access appropriate association books and records.
- Prudent expenditure of fees and other assessments.
- Live in a community where the property is maintained according to established standards.
- Fair treatment regarding financial and other association obligations, including the opportunity to discuss payment plans and options with the association before foreclosure is initiated.
- Receive all documents that address rules and regulations governing the community association — if not prior to purchase and settlement by a real estate agent or attorney, then upon joining the community.
- Appeal to appropriate community leaders those decisions affecting non-routine financial responsibilities or property rights.

Homeowners Have the Responsibility To:

- Read and comply with the governing documents of the community.
- Maintain their property according to established standards.

- Ensure that those who reside on their property (e.g., tenants, relatives, friends) adhere to all rules and regulations.

Principles for Homeowners and Community Leaders:

- Expect owners and non-owner residents to meet their financial obligations to the community.
- Expect residents to know and comply with the rules and regulations of the community and to stay informed by reading provided by the association.
- Respectful and honest treatment from residents.
- Conduct meetings in a positive and constructive atmosphere.
- Receive support and constructive input from owners and non-owner residents.
- Personal privacy at home and during leisure time in the community.
- Take advantage of educational opportunities (e.g., publications, training workshops) that are directly related to their responsibilities, and as approved by the association.

Community Leaders Have the Responsibility To:

- Fulfill their fiduciary duties to the community and exercise discretion in a manner they reasonably believe to be in the best interests of the community.
- Exercise sound business judgment and follow established management practices.
- Balance the needs and obligations of the community as a whole with those of individual homeowners and residents.

Continued on Page 14

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And so with the sunshine and the great bursts of leaves growing on the trees, just as things grow in fast movies, I had that familiar conviction that life was beginning over again with the summer.

~ F. Scott Fitzgerald, *The Great Gatsby*

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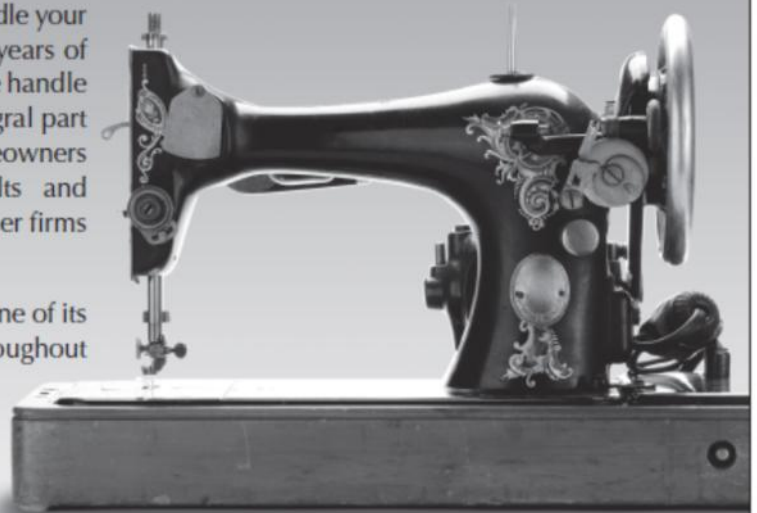
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Continued from Page 12

- Understand the association’s governing documents and become educated with respect to applicable state and local laws, and to manage the community association accordingly.
- Establish committees or use other methods to obtain input from owners and non-owner residents.
- Conduct open, fair and well-publicized elections.



- Welcome and educate new members of the community — owners and non-owners residents alike.
- Encourage input from residents on issues affecting them personally and the community as a whole.
- Encourage events that foster neighborliness and a sense of community.
- Conduct business in a transparent manner when feasible and appropriate.
- Allow homeowners access to appropriate community records, when requested.
- Collect all monies due from owners and non-owner residents.
- Devise appropriate and reasonable arrangements, when needed and as feasible to facilitate the ability of individual homeowners to meet their financial obligations to the community.
- Provide a process residents can use to appeal decisions affecting their non-routine financial responsibilities or property rights — where permitted by law and the association’s governing documents.
- Initiate foreclosure proceedings only as a measure of last resort.
- Make covenants, conditions and restrictions as understandable as possible, adding clarifying “lay” language or supplementary materials when drafting or revising the documents.
- Provide complete and timely disclosure of personal and financial conflicts of interest related to the actions of community leaders, e.g., officers, the board and committees. (Community associations may want to develop a code of ethics.)

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The Value of CAI Business Partners

CAI Business Partners are indispensable to common-interest communities. More than just product and service providers, these valued CAI members are good corporate citizens. They contribute to CAI publications, speak at CAI conferences and teach CAI professional development courses. Their involvement in CAI is an investment in the very concept of common-interest living.

CAI Business Partners also are essential to the success of homeowner and condominium associations from coast to coast. Compared to nonmember service providers, CAI Business Partners are generally more likely to:

1. Understand community association operations, which saves associations money and reduces frustration for board members and community managers.
2. Have products and services specifically designed for community associations—they don't try to force fit generic solutions into the community association model.
3. Be attuned to community association trends and in a better position to make recommendations and suggestions that a non-CAI business partner may not even consider.
4. Have experience with other community associations, therefore understanding the nature and dynamics of community associations and how best to serve them.
5. Be familiar with community association management, governance and best practices.
6. Understand the roles of board members, management professionals and residents and the relationships among them.
7. Understand the proper request-for-proposal and vetting processes.
8. Understand community association finances— invoicing, budgets (operating, deferred and long-term) and reserve studies.
9. Be exposed to the unique and evolving aspects of community associations through CAI education, publications and events.

Importantly, CAI Business Partners sustain CAI through their membership dues, sponsorships and advertising—support that helps keep CAI membership, education and events more affordable for all members.



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