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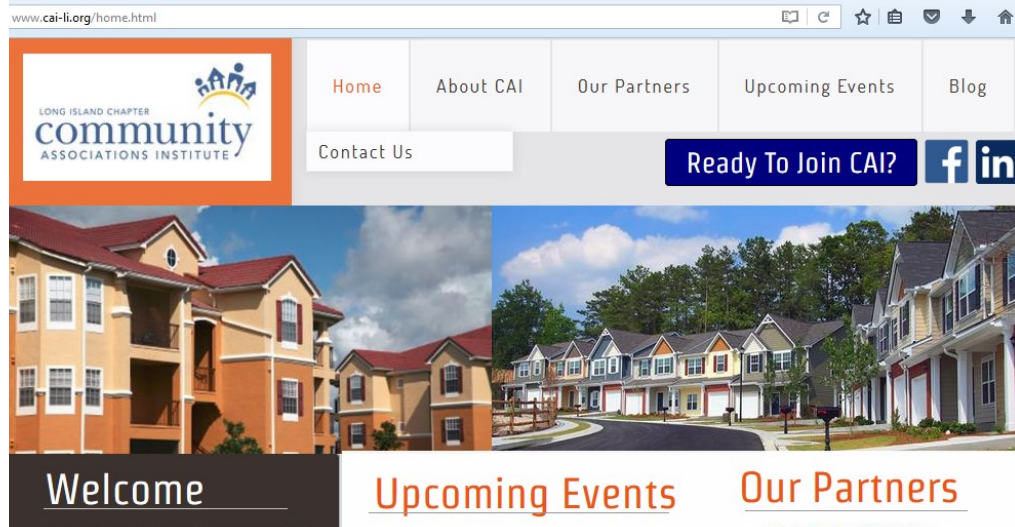
Published by the Long Island Chapter of CAI

Issue No. 32 – Spring 2016

**SAVE THE DATE**  
**TRADE SHOW**  
 SATURDAY – OCTOBER 22, 2016  
 9:00AM - 3:00PM  
 Hilton Long Island, Melville  
 Breakfast & Lunch will be served.  
 Educational Classes, Chapter Awards, & Raffles

## NEW & IMPROVED... CHECK US OUT!

By CHRISTINE M. MAJID, EXECUTIVE DIRECTOR OF CAI LONG ISLAND



Good news! CAI Long Island is pleased to announce the recent launch of its new website which offers quick and easy access to essential information for community association Board members and industry professionals on educational meetings and seminars with networking opportunities. Undergoing a complete upgrade, the site has been visually enhanced with its new simple layout and fresh design, and has increased features and functionality making it more beneficial, to both our members and online visitors, in its usability and responsiveness.

Please take a moment to visit us online at [www.cai-li.org](http://www.cai-li.org) and introduce yourself to the new site. As you explore, you will find that it is much easier to access and navigate, is now mobile-friendly, links to the Chapter's social media sites on Facebook and Twitter, all of which will improve your online experience.

Special thanks to LI Chapter Board Member Eric B. Clemente for volunteering a wealth of his time to chair the Website Committee and successfully lead the way on this project, producing such a fantastic outcome! ■

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*The CAI Long Island Newsletter is published quarterly by the Long Island Chapter of Community Associations Institute (CAI-LI) and is distributed to its members and is available on the Chapter website (cai-li.org). This publication provides members of CAI with letters from the Chapter President, informative articles written by industry professionals and service providers, updates on current legislation, and business advertising. The Chapter strives to provide our members with timely information and tools needed to keep them informed on community association issues.*

*The Newsletter Committee is always looking for new articles to publish. Articles should be educational and non-promotional in nature and have a suggested word count between 500 and 1,500 words. CAI-LI retains the right to edit articles to conform to content and space requirements. If you are interested in submitting an article for possible inclusion, please contact Christine M. Majid, Chapter Executive Director, at [info@cai-li.org](mailto:info@cai-li.org). Are you interested in advertising with us? Let us know!*

### Quarterly Deadlines

Winter Issue - January 31

Summer Issue - July 31

Spring Issue - April 30

Autumn Issue - October 31

## PROLONG STORMWATER POND DREDGING WITH THIS ALTERNATIVE

By JEFF CASTELLANI - DIRECTOR OF MECHANICAL OPERATIONS, SOLITUDE LAKE MANAGEMENT



Every community will, at some point, be faced with implementing water quality management strategies to slow or reverse the aging process of their stormwater pond. Size of the waterbody, overall condition and available budget will determine which management options you can consider.

When a stormwater pond's function of collecting and retaining stormwater runoff is impaired due to accumulated organic and inorganic sediment, as well as nuisance aquatic vegetative growth, physical removal of this sediment and vegetation by dredging or Hydro-Raking should be considered. These two management techniques are typically considered once proactive management techniques are no longer feasible or effective to manage a pond. Determining which of the two management options is right for your community will be highly dependent on the management objectives, ecological goals desired and budget.

Dredging and Hydro-Raking both involve physical removal of debris and sediment, however each is used for varying reasons and outcomes. Dredging is heavily focused on both organic and inorganic sediment removal to restore pond depth. Hydro-Raking offers a more selective and holistic management approach to removing aquatic vegetation, associated root structures, and organic matter, and also for restoring or maintaining pond depth.

In addition to increasing the volume of your pond, there are several other reasons to consider either dredging or Hydro-Raking. Removing sediment and vegetation will aid in the removal of excess nutrients such as phosphorous and nitrogen. When a stormwater pond becomes nutrient loaded, algae blooms can occur more frequently and the growth of nuisance aquatic vegetation can proliferate. Both techniques can also recoup habitat for beneficial aquatic flora and fauna to thrive in and minimize stagnant water, decreasing the potential breeding ground for mosquitoes.

While it is important to understand the outcome of using each strategy, it is equally as important to consider how each

*Continued on Page 5*

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## Long Island Chapter Calendar of Events

*Thursday, May 19th - 6:00 p.m.  
Membership Meeting and Seminar  
"Ask the Experts"*

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

*Wednesday, June 15th - 3:00 p.m.  
LI Chapter's 5th Annual Golf Outing  
Spring Lake Golf Club, Middle Island*

*Tuesday, July 19th - 6:00 to 8:00 p.m.  
Summertime Celebration Social  
Trento Restaurant*

*1058 Broad Hollow Road (Route 110), Farmingdale*

*Thursday, September 22nd - 6:00 p.m.  
Membership Meeting and Seminar  
"Fannie Mae & FHA Compliance"  
Capital One Bank*

*275 Broad Hollow Road, Melville*

*Saturday, October 22nd - 9:00 a.m. to 3:00 p.m.  
10th Annual Trade Show  
Hilton Long Island, Melville*

*Free Admission for Community Board Members*

*Saturday, November 5th - 8:00 a.m.  
Basic Essentials Class*

*for Community Association Board Members  
Belfor Property Restoration  
60 Raynor Avenue, Ronkonkoma*

*Thursday, November 10th  
Membership Meeting and Seminar  
Bretton Woods HOA Clubhouse  
Bretton Woods Drive, Coram*

*December - Chapter Holiday Party*



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will affect the waterbody's characteristics and inhabitants. Hydraulic/mechanical dredging with a cutting/vacuum mechanism or excavator temporarily alters the physical habitat and permanently removes existing aquatic life, whereas the York Rake attachment on the end of the Hydro-Rake allows aquatic organisms to escape. Both dredging and Hydro-Raking can temporarily affect water turbidity and decrease water quality through the release of nutrients and solids when the sediment is disturbed, but the extent of the effects varies by the magnitude of the project. Because of its aggressive and disruptive removal process, dredging has increased environmental effects on some waterbodies.

Another consideration when determining whether dredging or Hydro-Raking is right for your community is the logistical plan for entering the waterbody and where the removed sediment will remain temporarily while it dries out. When



*The Hydro-Rake, which is seen at the shoreline as it removes submerged aquatic vegetation, root mass and attached hydro-soils from a waterbody, creates a spoil pile which will then be moved to a dewatering or compost location to dry out away from the shoreline.*

hydraulic dredging, a large nearby area is required to pump the slurry for dewatering and disposal. When dry dredging, the whole waterbody is drained and sufficient shoreline access is needed for the trucking and hauling involved. Hydro-Raking generally requires less preparation, involving the identification of a shoreline staging area to launch and remove the Hydro-Rake, off-load the material and a disposal plan. The duration of a dredging or Hydro-Raking project is contingent on the project objectives and management areas.

For a project of this magnitude, one of many communities' most important considerations is the budget. When dredging, there are considerably more permitting and design costs due to the magnitude of the project scope, equipment and planning necessary. Dredging may also require soil

*Continued on Page 6*



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sampling which is an additional cost, based on state regulations. Hydro-Raking is oftentimes more economically feasible when compared to dredging, particularly with small scale (<5 acres) vegetation and hydro-soil removal projects. However, larger-scale Hydro-Raking projects can often be phased over a multiple-year period.

While both dredging and Hydro-Raking remove organic and inorganic sediment built-up on the pond's bottom, they both offer varying services to a waterbody. Hydro-Raking is frequently chosen as a method to remove nuisance aquatic vegetation, root structures, organic matter and debris to a smaller scale waterbody. Dredging is often a better alternative for large scale organic and inorganic sediment removal projects. If a pond is periodically maintained through Hydro-Raking, the need to perform a large scale dredge project may be negated, saving financial resources, and preventing extensive ecological disruption from the dredging process. To determine if your Homeowner's Association stormwater pond could benefit from Hydro-Raking, speak with your lake or pond management professionals. ■

*Jeff Castellani, Director of Mechanical Operations with SOLitude Lake Management can be reached at [JCastellani@solitudelake.com](mailto:JCastellani@solitudelake.com).*

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## THE HIDDEN MONSTER

By JOHN RYLEY – PRESIDENT, DRYER VENT WIZARD

In the last three years, there has been a growing awareness of cleaning the inside of the dryer as well as the lint tray, in addition to the dryer vent. The momentum of change increased when Maytag recently lost a class action suit for failing to inform customers that they need to clean the inside of the dryer.

I often use the analogy that the dentist has given me the same advice my entire life — for good oral hygiene, you need to brush and floss your teeth. The same is true in your home. For thorough **fire prevention** in the laundry, you need to keep the vent clean and inspect the lint tray and machine's interior annually. Some dryers and lint trays are easy to open and clean. If you are a do-it-yourselfer, you can find easy guides on YouTube. If not, a licensed professional is the best answer.

One of our member properties, Mystic Pines in Bay Shore, recently completed a community wide project where all dryer vents, lint trays, and machine interiors were cleaned. The community has, in essence, hit the reset on every dryer vent and system. They will be adding this as part of their maintenance on a regular interval to reduce the risk of fire.

Regular maintenance is key to performance. We wouldn't drive our cars without changing the oil regularly and are alerted to do so by either a sticker on the window or a light on the dashboard. Most dryers do not offer these same visual cues, so it is the **owner's responsibility** to make a regular maintenance schedule. ■



*This is an interior of a 2-year old machine.*

*John Ryley, President of Dryer Vent Wizard can be reached at [JRyley@DryerVentWizrd.com](mailto:JRyley@DryerVentWizrd.com).*




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## NON-COMPETE AGREEMENTS IN THE WORLD OF COMMUNITY ASSOCIATION MANAGEMENT — TAKE’EM OR LEAVE’EM? PART II

By MARGEY MEYER, PRESIDENT OF CADREXPERTS, LLC

*The first half of this article was published in the CAI Long Island Newsletter — Winter 2016 Issue.*

### Impact of Non-Compete Agreements on Managers

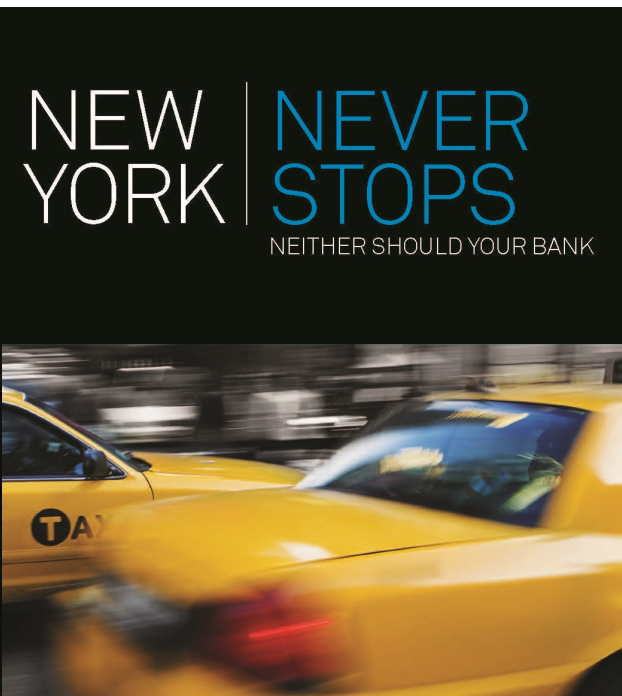
Managers bear the brunt of the negative effects of non-compete agreements. If the agreement clearly prohibits a manager from working for a competitor or starting a new management company for two years and within a defined radius of existing management company offices, the manager has few options. Especially with national management companies, there may not be a major city in the nation in which the company does not have a presence. If it’s a regional management company, the manager may be forced to leave family and friends in order to work in the community association management business. Faced with such daunting and limited alternatives, many managers leave the profession and work for association service providers and contractors. However, there’s still another caveat – some non-compete agreements even prohibit managers from entering another profession that competes with the

management company, such as general contracting, engineering, websites and bulk purchasing.

Other factors affecting a manager encumbered by a non-compete agreement include:

- Fear of employment termination and subsequent inability to earn a living. Even if the manager has worked for the employer for only a few months before separation either voluntarily or involuntarily, the manager is still restricted by the non-compete agreement for the specified period of time.
- Inability to change jobs despite ethical, financial or advancement disagreements with the employer.
- No increase in salary because the manager refuses to sign the agreement which is a condition of future salary considerations.
- Inability to be gainfully employed by another management company that fears retribution by the former employer.
- Inability to further develop a career in community

*Continued on Page 10*



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*Continued from Page 9*

association management.

- Fear of litigation, and its related cost and aggravation, from aggressive management companies even if the manager complies with the terms of the agreement.

### Recommendations for Management Companies

Many management company CEOs and other community association professionals are in agreement that non-solicitation/non-disclosure agreements are more fair and reasonable than encumbering managers with non-compete agreements. CEOs understandably want to protect their client base, and these two options are more palatable to both employees and customers. How does the management company CEO want his or her company to be perceived by existing and potential employees and clients and by fellow management company CEOs – respected as a fair, reasonable, gracious and staff-supporting organization or as a draconian bully who cares only about ensuring that no employee dare leave without suffering monetary damage in the perchance that clients will follow?

Experts in the community association industry agree. Julie Adamen of Adamen, Inc., says, “I find that management companies make their clients vulnerable to departing staff only when there are larger, systemic problems within the company, and/or, the departing manager was the only one with

whom the client had a relationship. Clients are much less likely to leave their current company - too much of a hassle - if they feel the company is providing overall good service to them AND they have a relationship with another employee - such as the District Manager, VP or even the owner. Too often a Board feels they have no connection to anyone but the manager, and that's the fault of the management company.”

Virginia attorney Glenn Silver, of Silver & Brown, P.C., recently successfully represented Community Association Management Professionals (CAMP) and two of its employees against litigation by a Dallas-headquartered community

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## CAN YOU LOWER COMMON EXPENSES BY THOUSANDS OF DOLLARS WITH SOLAR ENERGY?

By MALCOLM DAVID BLISS, DIRECTOR OF COMMUNITY PROGRAMS, LEVEL SOLAR

If you are like many others, your association spends tens of thousands of dollars each year on common area electricity charges. Indoor and outdoor lighting, appliances, a pool, and heating all contribute to a common area electric bill. Thousands of individual homeowners on Long Island have reduced their cost of electricity by 25% by installing solar panels on their roofs. HOA boards are wondering whether they can use solar energy to save up to 25% on the cost of electricity to lower common expenses and save money for unit owners.

HOAs have a lot to think about when it comes to solar energy. Everyone agrees that saving money on electricity is a good idea. Some residents may feel solar panels detract from the association's aesthetics. Other residents may feel that it is important to go solar in order to reduce carbon emissions to protect the environment and counter the climate crisis. In considering solar, boards also work to make sure solar panels are consistent with association rules and are fair to all residents.

When considering solar energy, associations should think about integrity of roofs, normal maintenance of the roof, and maintenance and operation of the panels. Today, there are solar solutions that guarantee the integrity of the roof, will remove and reinstall panels as needed for roof maintenance for a minimal

charge, and assume all responsibility for ongoing maintenance and operation of the panels. Proximity of your solar provider will be a factor to consider, to make it easier for your provider to deliver service. The online facilities, Solar Reviews ([www.solarreviews.com](http://www.solarreviews.com)) and Better Business Bureau ([www.BBB.org](http://www.BBB.org)), are valuable resources for reinforcing your own assessment of a solar provider.

Holding other considerations aside, the financial benefits of solar have increased in recent years. The cost of solar panels has come down. Individual panels produce more electricity. The installation process has become more efficient. Financing has become easier, so that an association can now get solar panels without any cash outlay and start saving money right away. As a result of all of these changes, solar panels can be installed at no charge, and the cost of electricity from solar panels is significantly less than the normal cost of electricity from PSE&G.

If your association has a common area building or buildings with a favorable roof, then putting solar panels on that roof could start saving your association money this year. You will get the most benefit from solar panels if your roof is large and receives a lot of sun. Usually pitched roofs are more attractive

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association management company. First, a judge held that the non-compete provision was overly broad and vague and therefore unenforceable against the first manager, so the Dallas company dropped its non-compete lawsuit against the second manager and CAMP. Then, a jury found in favor of the second manager on the remaining claims of breaches of confidentiality and of fiduciary duty.

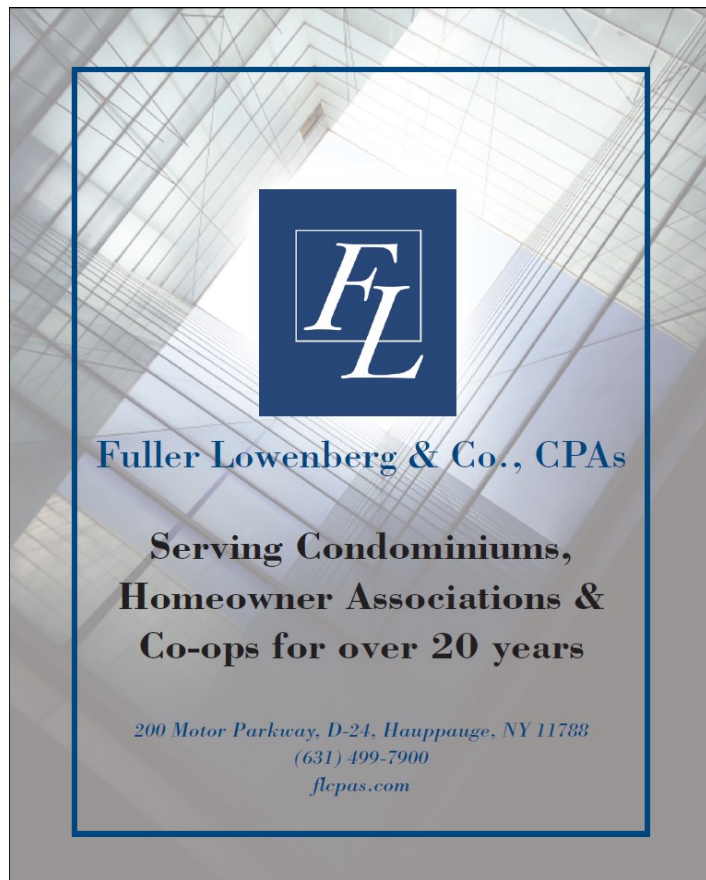
Silver asserts that narrowly drafted non-compete agreements are fair for top executives who are being paid top dollar. For other employees who deal with marketing, community association management or administrative functions, limited non-solicitation agreements are preferable.

Ed San George, MPA, PCAM, President of Integra Management Corp in Mt. Arlington, NJ believes that non-disclosure agreements relating to confidentiality of company information and non-solicitation of accounts or employees are appropriate. According to George, "You can't stop an employee from securing employment with a competitor, but you can stop the dissemination of confidential information and the non-solicitation of accounts and employees, in this case for two years."

Sonya Bradley, CMCA, AMS, PCAM, President of Midtown Management Corporation and previously a portfolio manager in Houston, Texas, agrees: "To make unrealistic demands against someone working for a community or doing business with a community they previously managed is not good. If a company does their job by keeping a client happy and are serving them per their contractual obligations, then they should not be as concerned about losing a client just because a manager leaves and goes to work for another management company. The client will be less likely to follow if they are happy with the overall services the management company offers and will understand that there is turnover in employees, but will be confident that another suitable replacement will be found who will serve them well."

Lisa Esposito, former CEO of a California community association management company and currently Marketing and Customer Service Director for A.C. Enterprises in San Francisco, California, concurs: "I believe that the most successful management company practices are based on good business practices, policies, procedures and above all else, good communication, none of which involves trade secrets."

In an industry that requires extraordinary customer service even when there is adversity, it is critical that the management company provide a 'safe harbor' for its employees. A company that provides a working environment that is caring, and demonstrates its support of its employees in deed, not only in words, will enjoy the greatest success."



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Another Houstonian, Carolyn Bonds, PCAM, President of Crest Management Company, AAMC, and Ed Alrutz, CPM, CMCA, AMS, PCAM, President, KPA Management, AAMC, Falls Church, Virginia, recommends a one-year non-solicitation agreement for the manager. Alrutz further includes a provision precluding the employee from working for a KPA client for a year following the employee's departure. Bonds and several other CEOs – John Lawton, former owner of a management company in Raleigh, N.C. and Houston's Ransom Daly, CMCA, AMS, PCAM among others – suggest including a provision in the management contract prohibiting an association from hiring a company's employee for a period of one year following that employee's departure from the management company. According to Bonds, "This may or may not discourage anyone, but at least they will have to stop and think about it and decide if it is worth risking a lawsuit to do this. We have not had anyone abuse this and we have only lost one account to a prior manager."

Douglas Kleine, CAE, President, Professional Association Services, Alexandria, Virginia, offers several alternatives to requiring non-compete agreements:

- Include in the employment agreement that the employee will reimburse the company for all expenses relating to

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training and certification fees if the employee voluntarily leaves within a certain period of time, perhaps two years.

- Include a specific monetary penalty or prohibition against working for an existing client for a period of one year.
- Include in the management agreement a provision imposing a monetary penalty on the association should it hire an employee within a year following his or her departure from the management company.

Silver offers another option – pay the manager for the period in which the non-compete is in effect.

An essential factor in this discussion of non-compete agreements is the Community Associations Institute's Professional Manager Code of Ethics, a tenet of which states that the manager shall:

*Not use the work products of colleagues or competing management firms that are considered proprietary without the expressed written permission of the author or the management firm.*

What better encouragement for a management company CEO to protect the company's best interests than to support managers' efforts to attain a CMCA credential or AMS or PCAM designation? Depending on the severity of the violation of the code of ethics, CAI could ultimately impose

public censure and revoke both CAI membership and credentials.

### Recommendations for Managers

Adamen, Inc.'s Julie Adamen does not believe managers should sign non-compete agreements. She asserts that "the problem is that the companies - especially the larger ones - have much deeper pockets than the ex-employee, and the mere filing of a suit can cost the respondent thousands of dollars they likely can't afford. Non-compete agreements keep most departed managers from working in their profession until the agreement is over. So, if you aren't willing to forego two years' in your industry (even if they eliminate your position or fire you) - don't sign a two-year non-compete unless you can afford the lawsuit."

If a potential employer requires execution of an employment agreement prior to employment, consider the following:

- The agreement was prepared by the company's attorney to protect the company, not the employee.
- Don't give notice to your current employer until you have received from your potential employer -- and reviewed -- all the paperwork you will be expected to sign.
- Have a labor lawyer review the paperwork before accepting

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employment.

- Read the employment agreement in its entirety. Even if there is no specific heading entitled “Non-Compete,” similar content may be included under another heading. Don’t take the employer’s word that there is no non-compete provision.
- What is the duration of the non-compete? If it’s two years, try to negotiate to one.
- What is the geographic limitation? If it’s within 100 miles of the employer’s office in all directions, does that leave you any options to find a similar job in your area? Try to negotiate it to within a more reasonable radius, perhaps 20 miles. Is it within a specified number of miles of any office in any state in which the management company has a presence? Try to negotiate to just the location where you will work.
- What are the work limitations? In addition to not being able to manage community associations based on duration and geography, are you prohibited from going to work for an ancillary service company such as website provider, general contractor or other service provider?
- The employment agreement should say that if an action is brought to enforce restrictive covenants, the substantially-prevailing party is entitled to attorney fees. Most agreements provide for the management company to be awarded attorney fees, but no mention of the employee’s rights.
- Is a severance package included in the employment agreement? If not, it’s better to negotiate it up front, when the employer wants you, than when you’re terminated and have no negotiation power.
- The non-compete agreement should not take effect until six-months after your employment date. That gives both you and your employer time to determine if you’re a “fit” with each other. Imagine if you worked for the company for only a few months and are now prohibited from remaining in the community association profession in your area for the next year or two!
- Rather than agreeing to a non-compete restriction, negotiate a non-solicitation/non-disclosure agreement instead.

What happens if an employer asks a current employee to sign a non-compete agreement? Silver says that the request/demand should be followed by a salary increase, signing bonus or other remuneration. Non-compete agreements must benefit both employer and employee; during the hiring process, the employee’s consideration is the promise of employment. After the employee is on board and is asked to sign an employment agreement, the employer must offer

another consideration. Tilson HR’s Dawn Lively says it best – asking an existing employee to sign a non-compete agreement should raise a red flag to any employee.


### Summary

Finding a reasonable balance between protecting the best interests of a management company and a manager’s ability to earn a living is an achievable challenge if the CEO focuses on what each ultimately wants to accomplish. Well-written non-solicitation agreements prevent former employees from pursuing clients and staff. If the major concern is protecting a company’s trade secrets (if any), a non-disclosure agreement would better address that issue. Utilizing these documents instead of the more restrictive non-compete agreements allows a manager to continue in his or her profession, to earn a living, and to contribute to the professionalism and growth of the community association management industry.

According to Adamen, there are thousands of community association manager positions in the United States unfilled because of the dearth of qualified managers. Skilled managers are in high demand. If a non-compete provision is not acceptable, managers have the power to negotiate less restrictive, more palatable terms, or walk away and find another management company that understands the effectiveness of non-solicitation and non-disclosure agreements.

Community association management company CEOs can grow the company only by hiring more managers. Managers are in the driver’s seat, with the clout to affect the success or failure of the company. Most CEOs recognize and respect the value and integrity of their managers and work with them to craft an employment agreement that is fair and reasonable to both parties. ■

*If you have any comments or questions you may reach Margey at (713) 465-2048 Direct, (855) CADRExp (223-7397) Toll Free, or [mmeyer@cadrexperts.com](mailto:mmeyer@cadrexperts.com).*



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than flat roofs for solar panels. If the sunniest part of a roof is free of skylights, dormers, and chimneys, that will also increase the amount of electricity you can produce from that roof.

Some associations have explored solar in years gone by. In the past, up-front costs and long payback periods deterred



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associations from using solar energy. In view of the increased financial benefits that are now available, associations are once again exploring solar. Marilyn Ecolino, who is a board member at a Long Island HOA said, “A few years ago, one of the neighbors put on solar panels. At that time, nobody else did

because of the long payback, but now residents are going solar, and I am interested in powering the pool house and the common area. We always want to see upgrades in the community, and solar is the future.” Jim Barnes, who is a board member at a different Long Island HOA, said, “Our association rules limit how much we can raise fees and charge in special assessments. Reducing our spending on electricity could help us afford essential maintenance and avoid special assessments.”

Each association will consider its own rules in deciding whether to take advantage of solar energy. In many cases, the decision to put solar panels on common facilities to reduce common area electricity expenses would be made by the association board. The board would make the decision in the interest of the association, and the electricity produced by the solar panels would benefit association members collectively by reducing common expenses.

Thousands of homes across Long Island have installed solar panels on their roofs to reduce their electric bills. With a favorable common area roof, HOAs can use solar panels to reduce common area expenses. In view of changes over the years, even HOAs that have explored solar in the past may find it worthwhile to revisit. When others are saving up to 25% on their electric bills with solar, why should HOAs be left out? ■

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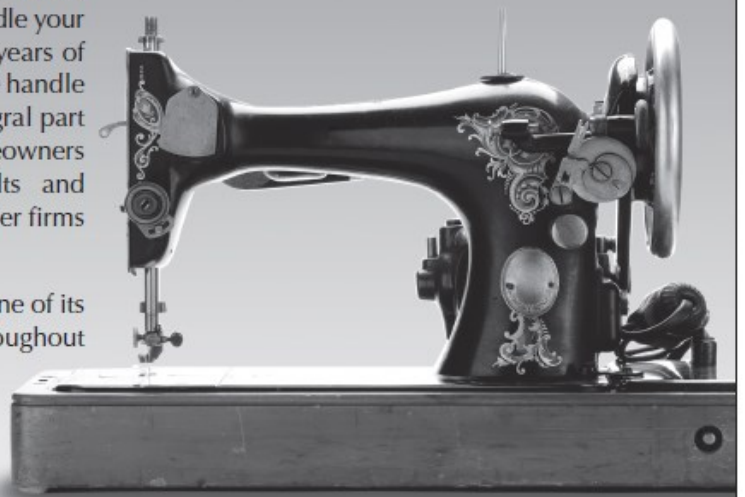
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