

CAI - LI Chapter News

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Issue No. 31 – Winter 2016

PROTECTING YOUR HOME IN WINTER MONTHS

By GINA MARZANO, MARCOR CONSTRUCTION, INC.

Summer has come and gone, the holidays have passed, and now we must brace ourselves for what winter might have in store for us this year. The last few winters have hit Long Island stronger than ever and many property owners were not entirely prepared. Shovels and snow blowers were flying off the shelves at the stores; you couldn't find ice melt almost anywhere!

Society today has become very "reactive" rather than remaining proactive when it comes to taking preventative measures to protect their homes. Here are a few helpful ways to be proactive and avoid the risk of what a cold and snowy winter may bring to Long Island.

Ice Damming: Ice dam has become a recognized term over these last few years to Long Island homeowners, damaging homes both inside and out. Ice damming is a common winter roofing problem caused by poor roof ventilation and a warm attic space. Left untreated, ice dams can cause serious damage to your roof, gutters, paint, insulation, drywall, structure and even contribute to mold.

Ice dams form when melting snow on a roof

runs off and refreezes at the edge of a roof. This condition occurs when the snow is



melted by a warm roof, creating water running between the snow and the warm roof surface, then freezing and turning to ice when it gets past the exterior wall and hits a cold unheated roof edge or gutter.

Ice damming can be avoided or prevented by increasing the amount of insulation you have in your attic so that the heat you are using to heat your home does not escape through inadequate insulation. A combination of ice and water shield and drip edge, in conjunction with a proper roof installation, will aid in the prevention of ice dams as well.

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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. 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

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Pipe Breaks: Pipe breaks are another common occurrence when temperatures plummet. The water freezes in the pipe, commonly on an outside wall, and when it freezes, expands and eventually breaks the pipe. This can potentially cause a massive amount of water damage in many cases.

Although this is typically a covered loss through your homeowner's insurance, it is a headache to deal with and can cause a lot of damage to your property and belongings. Pipe breaks can be avoided by maintaining the heat in your dwelling, usually around 68 degrees, especially when you are going out of town. Always make sure you have enough oil to heat your home. Insulate outside walls, keep windows closed on outside walls of your home, and be

sure to disconnect gardening hoses and flush out your sprinklers if necessary.



Many of the headaches we face as homeowners can be avoided with proper prevention strategies and planning ahead. On Long Island, we are going to always face drastic weather changes; therefore, taking some of these ideas into consideration could carry you a long way. If you take preventative measures, when the next snow storm finds its way in your neighborhood, you could kick your feet up by the fire place with some hot cocoa rather than worrying about keeping the storm out of your house! ■

Contact Gina at (631) 321-0593 or gmarzano817@gmail.com.



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Long Island Chapter Calendar of Events

Thursday, March 24th - 6:00 p.m.
Membership Meeting and Seminar
"Energy Conversions by National Grid"
Capital One Bank
275 Broad Hollow Road, Melville

Thursday, April 21st - 6:00 p.m.
Membership Meeting and Seminar
"Insurance Risks & Cyber Fraud"
Fairfield Knolls
Old Town Road, Port Jefferson Station

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

June - LI Chapter's 5th Annual Golf Outing
Spring Lake Golf Club, Middle Island

July - Summertime Social

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

October 22nd - 10th Annual Trade Show
Hilton Long Island, Melville

Saturday, November 5th - 8:00 a.m.
Basic Essentials Class
for Community Association Board Members
Belfor Property Restoration
60 Raynor Avenue, Ronkonkoma

November - Membership Meeting and Seminar
Bretton Woods HOA Clubhouse



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PRESIDENT'S MESSAGE

By PATRICK J. MATHEIS - ASSISTANT VICE PRESIDENT, M&T BANK, CAI-LI CHAPTER PRESIDENT FOR 2016



Greetings! It is an honor to serve as President of the Long Island Chapter of CAI for 2016 and I am excited about the year ahead. I have gained a significant amount of knowledge and built many solid relationships since becoming involved with this outstanding organization four short years ago.

Last year, I had the privilege of serving as Co-Chairperson

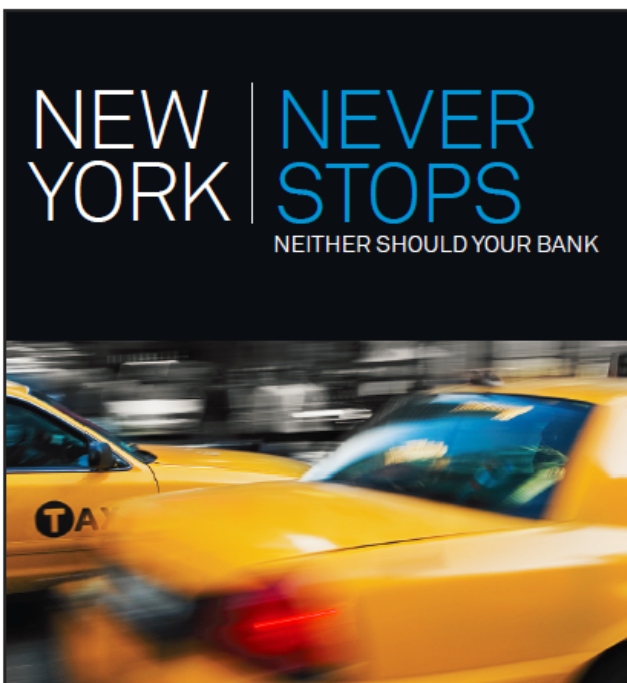
for the Ninth Annual CAI Trade Show, along with Suzanne Borelli, and I am proud of the contributions we made to this important event. I am pleased to report that this year, that honor will be shared by Chris Byrnes, Esq. of Schroder & Strom, LLP, and Woody Goldstein at Mayer CPAs. Both Chris and Woody have the best interests of CAI and its members at heart and they are excited to make the Tenth Annual Trade Show the best yet.

Over the next several months, Chris and Woody will be working with subcommittees to decide upon the specific education provided and overall content for the October event. Last year's success was largely attributed to the terrific ideas and contributions made by volunteers on the Trade Show committee.

If you would like to offer your assistance with the 2016 Trade Show, please reach out to Chris at CByrnes@nytaxreview.com or Woody at WGoldstein@mayercpa.com. I'm certain that they will welcome your contributions. Their goal is to ensure that the Trade Show topics, presenters and exhibitors represent the interests and priorities of the communities we serve.

I will do everything I can to ensure that this organization continues to thrive under my leadership and the leadership of the Board of Directors. I am certain that this will be an exceptional year and I hope to see everyone at the next CAI Membership Meeting on March 24 in Melville where we will also have an educational presentation by National Grid. ■

Warm regards, Patrick J. Matheis



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CAI ADVOCACY SUMMIT – WASHINGTON, D.C.

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

Earlier this year, I became a member of CAI's Government and Public Affairs (G&PA) Committee. The mission of the Committee is to monitor and evaluate proposed state and federal legislation that might have an impact on community associations, and then to advocate for positions that are favorable to community associations.

In October, I participated in a two day Advocacy Summit in Washington, D.C. which was sponsored by the G&PA Committee. The Summit was attended by approximately 50 representatives of CAI Chapters from across the country. The afternoon of the first day was spent learning and discussing the several pieces of proposed legislation before Congress that were deemed most likely to have the greatest impact on community associations. First was the Disaster Assistance Equity Act of 2015. This bill is sponsored by one of Long Island's own congressmen, Representative Steve Israel. Rep. Israel realized, as a result of Super Storm Sandy, that condominiums, co-ops and homeowners associations were considered commercial entities by FEMA and thus did not qualify to receive disaster assistance. CAI staff and Committee volunteers worked closely with Rep. Israel on drafting the proposed legislation, which is designed to close this loophole. Obviously, CAI and the G&PA Committee are strongly in favor of this legislation.

Another proposed bill before Congress is the Amateur Radio Bill which would allow community association residents to erect antennae outside their units to facilitate their use of ham radios. This bill, if passed, would supersede any regulations that a community may have regarding antennae and the use of common property. CAI and the G&PA Committee oppose this legislation.

On the second day of the Summit, attendees visited the offices of their respective Congressmen and Senators to discuss these pending legislation issues. My first appointment was with Rep. Israel. The object of the visit was not a discussion, but rather to deliver a heartfelt "Thank You" to Steve for all the work he and his staff put into formulating the Disaster Assistance bill. I accompanied Tom Skiba - Executive Director of CAI, Dave Caplan - current CAI

national President, Ron Perl, Esq. - Chair of the CAI Federal Legislative Action Committee, and Scott Canady - CAI's federal lobbyist, on this visit. While I was definitely the light-weight of the group, I was the token one from New York. We provided the Congressman with CAI's 2015 Hero of Associations (HOA) Award, had a picture taken with him, and were on our way.

My next appointment, at which I was accompanied by Scott Canady, was with a legislative aide of Senator Kristin Gillibrand. It was Mr. Canady's suggestion that we focus our attention on the Disaster Assistance bill because of its importance for Long Island and New York City community associations. The representative had not yet heard of the

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proposed bill (Rep. Israel has introduced the bill in the House of Representatives, but a counterpart has not yet been formulated in the Senate) but was knowledgeable of the issues involved with FEMA assistance and expressed interest and initial support for the concept. The aide promised to investigate the matter further by contacting Rep. Israel's office and FEMA representatives and indicated that he would then discuss the matter with Senator Gillibrand. We provided him with background material on the bill which had been expertly prepared by CAI.

Overall, I was very impressed with the degree of CAI's involvement in federal legislative issues. The Summit was well attended, well designed and well organized. Most importantly, it was eminently clear that CAI, its staff and committee volunteers are working hard to safeguard and promote the interests of community associations at the national level. Up until recently, my CAI orientation has been focused almost exclusively on our Long Island Chapter.

My participation in the G&PA Committee and my attendance at the Advocacy Summit have opened my eyes to the significance of CAI's efforts on the national stage. While things in Washington, D.C. often move slowly, any developments – or the lack thereof – can have a lasting and significant effect on community association life here on Long Island and throughout the country.

If anyone is interested in learning more about the work of the CAI Government and Public Affairs Committee, please contact me. ■

Ed may be reached at (631) 265-5550 or edtaylor@taylor-eldridge.com.

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CONDO LIEN AS A CONTINUING LIEN — AND WHY CONDOS AND LENDERS CARE

By BRUCE J. BERGMAN, ESQ. OF BERKMAN, HENOCH, PETERSON, PEDDY & FENCHEL, P.C.

A new case firmly confirms an important principle: a condominium common charge lien is a continuing lien [Board of Mgrs. of Netherlands Condominium v. Trencher, 128 A.D.3d 452, 9 N.Y.S.3d 213 (1st Dept. 2015).] What precisely that means to condominiums, and why it is quite meaningful as well to mortgage lenders, is the focus here.

The Continuing Lien Concept

Just as it is with a mortgage lender, a condominium (through its Board of Managers) will wait a certain amount of time before it feels the need to file its condominium common charge lien. However many months (or years) that may be, when the lien is filed it represents a finite number of the various sums due, which include, among other things, common charges, assessments, late charges, interest, penalties, along with other possible charges. Even if the unit owner eventually pays the past due amounts, the amount due will be greater than is recited in the lien, for the obvious reason that the passage of time caused further items to accrue. (It is strongly recommended that condo boards not delay in filing liens for delinquent common charges.)

Of similar import, if a condominium common charge lien action is begun, and whether it is paid off sometime during the action or actually proceeds to foreclosure sale, the sum due is considerably larger than the amount identified in the lien - for the same apparent reasons. In that regard, a referee in the condominium common charge lien foreclosure action is required to make the computation and his numbers will need to reflect accruing sums, not merely the number contained in the lien.

Must a condominium file liens periodically to address the growing sums? And if they do, do they need to start separate actions? How does this all relate to the condominium's foreclosure action? Happily, the simple answer (as confirmed by the new case) is that the condo lien is a continuing lien, that is, the lien encompasses, and the foreclosing condo plaintiff is entitled to receive, not only the amount claimed in the lien, but also the aggregate of unpaid common charges and fees that have accrued since the filing of the lien.

While we have long believed that this was indeed the law, it had not been directly addressed by an appeal court – although that is solved with this new case. Thus, higher court authority has stated what all the lower courts had concluded so that there can be no issue but that a condominium common charge lien is a continuing lien – obviously good and comforting news for

any condominium board of managers.

Why This Matters to Mortgage Lenders

Condominium boards should be aware that statute affords to condominiums a special priority to the condominium common charge lien. It is declared to be senior to (essentially) all other liens and mortgages except a first mortgage. (This is pursuant to RPL §339-z.)

Thus, while the holder of a first mortgage is not concerned with the growing sum due on the junior condominium common charge lien, the holder of a second or more inferior mortgage upon the condo unit does care. The subordinate mortgagee is subject to an ever increasing sum due on the condominium lien and, depending upon that amount, this could be consequential.

In conclusion, that a condominium lien is a continuing lien has genuine meaning both to condominiums and to lenders. ■

Bruce J. Bergman is the author of the four-volume treatise, Bergman on New York Mortgage Foreclosures, LexisNexis Matthew Bender (rev. 2014). He may be reached at b.bergman@bhpp.com.

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NON-COMPETE AGREEMENTS IN THE WORLD OF COMMUNITY ASSOCIATION MANAGEMENT — TAKE'EM OR LEAVE'EM? PART I

By MARGEY MEYER, PRESIDENT OF CADREXPERTS, LLC

Non-compete agreements increasingly have become the topic du jour among both CEOs of community association management companies and community managers. CEOs feel that such agreements are essential to protect their respective company's client base, financial viability, intellectual property and confidential information from predatory practices of former employees. At the same time, CEOs and associations want to be able to hire the most qualified managers who best fit the company's or community's culture, without hiring restrictions imposed by non-compete agreements. Managers feel that non-compete agreements limit their options to earn a living. Is this a black-and-white issue, or is there a middle ground that protects both manager and management company? This article will explore the genesis of this type of contract and offer alternatives that may satisfy the interests and concerns of all parties.

Definitions

First, though, is the need to clarify the differences among

non-compete, non-solicitation and confidentiality agreements.

In the broader sphere of business, non-compete agreements were originally intended to protect a company from the upper echelons of management who, with knowledge of the inner workings, strategies, operations and finances of the company, could accept a position at a competitor and disclose the original employer's trade secrets. The new employer could capitalize on that knowledge and good will and gain a competitive advantage. A non-compete agreement would prohibit an employee from competing with his or her former employer, either as an individual or as an employee of a competitor, for a specific period of time, within a limited, specific geographic area and for protection of specific intellectual property or trade secrets. Over the past decade, however, employers have extended the requirement to sign a non-compete agreement to all employees, not just on the C-suites and above. Alternatively, employers have focused the requirement specifically on employees who have value to

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the company and whom the employer is reluctant to release to competitors because the employee would increase the value of that competitor. A few of these evolved agreements prevent employees from working in any industry and in any capacity in which the former company may provide services, including telecommunications, Internet-related services, education and contract services, far beyond the normal scope of work of an onsite or portfolio manager.

The conundrum in the community association business is the definition of "trade secret" according to attorney Scott Carpenter of Carpenter, Hazlewood, Delgado & Bolen, PLC in Phoenix, Arizona.

The theory of restrictive covenants is that the employer has either (1) trade secrets, or (2) invested in bringing the employee up to the professional level. The problem is that great management companies understand that great managers understand people, problem solving and client service. The "trade secrets", if there are any, are on the process or technology side.

Non-solicitation agreements are less onerous than non-compete agreements. Non-solicitation agreements

prohibit an employee from soliciting a former employer's clients and employees for a specific period of time, usually one to two years. In my own non-scientific survey of eight current and former community association management company CEOs from around the country for this article, six of them require potential employees to sign a non-solicitation agreement; only two imposed the more stringent requirement of executing a non-compete agreement. In the words of Kara Cermak, CMCA, AMS, PCAM, President/Principal of Rowell Management in Elgin, Illinois,

"I have my employees sign non-solicitation agreements which are specific as to their ability to communicate with Rowell's clients, upon departure, for a period of two years. My non-solicitation agreement does NOT prevent them from working for another firm, within the industry, in any way."

Confidentiality agreements, also known as non-disclosure agreements, prohibit the employee from disclosing to third parties (such as a new employer who competes with the former employer) trade secrets, proprietary information or knowledge of the company's operations.

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State laws regarding non-compete agreements

Boston attorney Russell Beck of the law firm Beck Reed Riden LLP occasionally publishes a survey of the status of non-compete agreements in all fifty states. Last updated in August 2015, the survey can be accessed at <http://www.beckreedriden.com/wp-content/uploads/2015/08/Noncompetes-50-State-Survey-Chart-20150809.pdf>. Included in the chart is 1) whether continued employment is sufficient consideration to support a non-compete (31 states say yes), and 2) whether non-compete agreements are enforceable against at-will employees whose employment was terminated without cause (28 states say yes).

What do state statutes and case law consider when determining the enforceability of non-compete agreements?

Is severance provided during the non-compete agreement?

Does the non-compete agreement create an undue hardship on the employee?

Is the duration of the time period reasonable?

Is the geographic location in which competition is restricted reasonable?

Is the agreement enforceable whether the employee or the

employer terminates employment?

What happens if the employee or the employer breaches the employment agreement in which the non-compete provision is included?

Is the public detrimentally affected if the non-compete agreement is enforced?

Can trade secrets and intellectual property be specifically identified?

Most states require employers to offer some kind of consideration in return for the existing employee executing

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STOP USING YOUR TAX REFUND ON AVOIDABLE EXPENSES

By ERIC B. CLEMENTE, ALURE HOME IMPROVEMENTS, INC.

Before you know it the following thoughts will be back in your mind...

- A. Does my boss REALLY expect me to go to work in this weather?
- B. Will the news get the snow total right this time?
- C. I hope they don't close the schools!
- D. Did I make sure my home is ready for the weather?

Unfortunately, I cannot help you with A, B, or C, but I will help you with D.

The winter season, is unfortunately, the time of the year where your home is most vulnerable to damage, some being extensive. In this article, I will offer to you some tips that will help to save you from using your tax refund on avoidable expenses – knowledge is power and it can save you money.

Fill the gaps to eliminate sources of infiltration and leakage. You can accomplish this by closing the spaces and gaps under your doors, replacing worn weather stripping around doors and caulk gaps around window frames.

Maintain your gutters by removing leaves and dirt with a spatula or scraper first. Then take a hose and spray them clean. When hosing the gutters, be sure to look for leaks and misaligned pipes. If you detect any, be sure to contact a professional to fix them. Clogged drains can form dams causing water to back up.

Always be sure that your pipes are insulated and that **your attic insulation is still intact**. If you can see the ceiling joists in the attic, you need insulation. This will not only help your house be more efficient, but will also assist in preventing ice dams. While you are in your attic, be sure that any fans, including your bath fans, are ventilating outside, not into your attic.

Put up the no vacancy sign...rodents like to stay warm too! Take a walk around your home and be sure that the ventilations pipes are all screened or the self-closings are properly working.

Allow your home to stay dry by making sure that the **ground is sloped AWAY** from your home/foundation. Doing so will eliminate lots of problems including mold, mildew, and unwanted moisture which will move into your basement, crawlspace, or even into your wood structure, causing structural damage.



Be sure your furnace is inspected, cleaned, tuned and be sure to change the filters. Make sure that your thermostat is properly working and while you are at it, have your chimney swept.

Be prepared for power outages and emergencies by cleaning and testing all fire and carbon monoxide alarms. Be sure to have properly working batteries, flashlights, and radios to be able to hear communications in an emergency.

Buy a roof rake and take advantage of those nice days after the storm. By raking your roof, even the very edge of it by your eaves and gutters, you can participate in eliminating lots of potential damages to your home.

This list is not the end-all step-by-step process to guarantee that no damage will occur to your home. It is however an EXCELLENT checklist that is, in essence, depositing preventative maintenance dollars back in your pocket...sometimes those fantasy dollars can quickly add up and maybe, just maybe, you'll be able to spend your tax refund on YOU! ■

If you have any comments or questions you may reach Eric at (631) 704-7184 or eclemente@alure.com.

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the agreement, such as a bonus, promotion or salary increase. Offering continuation of employment is not a legitimate consideration in this circumstance.

What does an expert in human resources think about the enforceability of non-compete agreements? According to Dawn M. Lively, MBA, PHR, Director of Client Services, Tilson HR, in Greenwood, Indiana,

“I would think, depending on the demographic dynamics of the region, it would still be considered enforceable for an agreement to range, say, 15-25 miles. However, much beyond that, keeping people from getting a job in their industry and profession, is the perfect example of non-compete agreements that are being challenged and are having some success at being deemed “too restrictive”, and therefore, unenforceable.”

Ransom Daly, CMCA, PCAM, President of Houston, Texas’ ACMP, Inc., has been in the community association management business since 1985 and has attended the CEOMC Retreat for almost two decades. He polled 11 CEO colleagues around the country and reports.

“Several CEOs I know have actually had good success with chasing the company who was trying to hire an employee in violation of the non-compete. Especially if they made them aware of the non-compete and they continued to pursue the employee, they were guilty of tortious interference of the contract.”

On the other hand, Daly agrees that suing under the non-compete detrimentally affects the reputation of the company in the community as well as morale and loyalty of its employees. Among those same eleven fellow CEOs Daly polled, there was consensus that the non-compete agreements were unenforceable with regard to the individual manager, and that it was not worth the effort, time, money and reputation to fight - and probably not win.

Impact of non-compete agreements on community associations

Associations that have an onsite staff naturally want to hire the most qualified personnel they can find. If the pool of talented, skilled managers is reduced by the number of managers restricted by a non-compete agreement, associations may have to settle for second- or third-best. Additionally, when the number of available managers decreases, competition among employers for the remaining available managers increases, potentially resulting in a bidding war and higher salaries – good for managers, bad for



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employers. Associations may also be forced to settle on second- or third-tier management companies because one manager in their employ may be encumbered by a non-compete agreement.

Impact of non-compete agreements on management companies

While some management companies require employees to execute non-compete agreements as a condition of employment, there are also disadvantages to wide-spread use of such agreements. Similar to the impact of non-compete agreements on self-managed associations, management companies are limited to hiring managers unencumbered by non-compete agreements. Consequently, management companies have a smaller base of potential managers from which to choose.

In a perpetually-diminishing cycle of benefits of non-compete agreements, the more management companies require employees to sign non-compete agreements, the fewer managers will be available to hire in order to grow the company or improve its reputation.

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Management companies hesitate to hire a manager under a non-compete agreement even though the CEO has no intention of pursuing or accepting contracts from associations formerly managed by the manager for the duration of the agreement. Why? Certain management companies with deep pockets have reputations for filing lawsuits against both managers and management companies to enforce non-compete agreements whether or not a violation occurred. They want to make it perfectly clear that they have the resources to challenge any real or potential threat to their client base and proprietary information. Most CEOs and managers don't want to spend time or money on such litigation and consequently hire someone who may not be quite as qualified but certainly poses no threat of legal action. ■

The second half of this article will be published in the CAI Long Island Newsletter — Spring 2016 Issue.

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.



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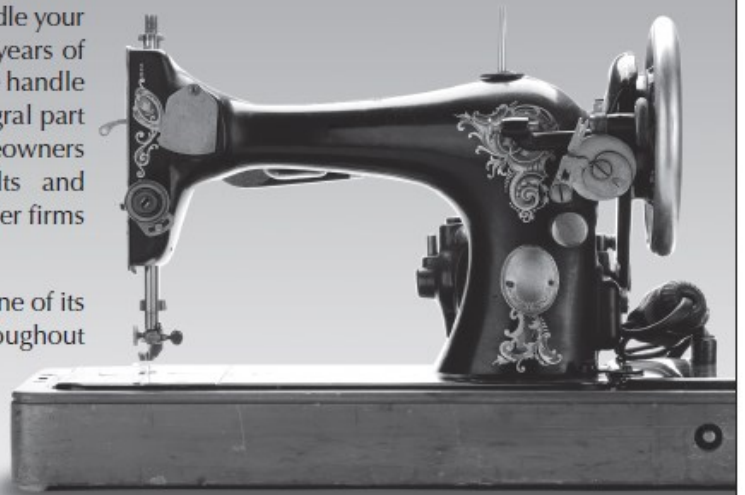
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