

CAI - LI Chapter News

Serving Long Island, New York

Published by the Long Island Chapter of CAI

Issue No. 38 – Autumn 2017

A BOARD'S MAP TO SUCCESSFUL COLLECTION OF COMMON CHARGES AND ASSESSMENTS IN CONDOMINIUMS AND HOMEOWNERS ASSOCIATIONS

By LAURA M. ENDRES, ESQ. - TAYLOR, ELDRIDGE & ENDRES, P.C.

COLLECTIONS OVERVIEW

In order to successfully operate a planned community, payment of certain expenses associated with the operation, maintenance, and control of the association are required. The Board creates a budget for these expenses, including proper reserve funding, and thereafter assesses the owners. The obligation of the owners to make payment of these assessments and the liability for non-payment is found in the association's governing documents.

If too many owners fail to make payment of their common charges and assessments, the association may be unable to pay its bills and keep the community running in the fashion and at the level the owners expect. Whenever an owner fails to make payment, all other owners must pay that delinquent owner's share. As a result, Boards have little choice but to move forward against delinquent owners. Failure to do so can be seen as a Board not satisfying its fiduciary obligation and affirmative duty to the community.

THE PROCESS

The Managing Agent

Anytime a unit owner fails to pay his/her monthly charges, a letter should be sent to the owner by the managing agent notifying him/her of the delinquency. If by the third month no payment is received, the matter should be turned over to the association's attorney. This is also the point at which the Board should determine whether to use, if available, its "non-legal" collection tools. These tools may include suspension of the rights of the owner to use the common areas and facilities. Which tools a community has at its disposal are found in its governing documents. These tools never include illegal actions such as the turning off of water or electric, which if done may cause the Board members to become personally liable and possibly fined by the local governing authorities.

The Attorney

» *Initial collection procedures*

Upon receipt of a ledger showing the owner's

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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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name and mailing address, the attorney will perform a limited title search to determine who the legal owner of the property is and whether there is a pending bank foreclosure action. This search is necessary to ensure the proper name is used to prepare the lien, if necessary, and to give the bank, if it is foreclosing, notice of the association's claim to any surplus funds in the bank's foreclosure action.

Once this information is obtained, the attorney is required by the federal Fair Debt Collection Practices Act to send an initial letter to the owner advising that the collection matter is being handled by the attorney and what amounts are due, along with other legally required information. On or about thirty days after this letter is sent, the attorney will reach out to the managing agent to inquire if payment has been made. If full payment has not been made, including the attorney fees due for the initial letter, a second letter will be sent to the owner advising that the attorney will now be placing a lien upon the premises. Simultaneously, the lien will be prepared and sent either to the Board or the managing agent for signature.

This initial timeline and procedure is a recommendation. As with all decisions being made by the Board, it should be discussed. After discussion, the decision of the Board should be communicated to the attorney for the Board. Often a delinquent owner will make a partial payment toward the

arrears. In this event, the Board and the attorney will make a decision on whether to proceed with placing a lien upon the property based upon the total circumstances of the particular matter.

» *When a lien isn't enough*

Sometimes a lien isn't enough to convince an owner to pay. It may be that the owner doesn't have the funds, or there may be a number of other reasons. Whatever the reason is, in order to keep the community fiscally viable, the Board must continue with the collection effort. When this is the case, the Board has two basic and different legal remedies: money judgment actions or foreclosure actions. A third option is available to condominiums if the owner is renting the unit. This option entails demanding that the renter pay his/her monthly rent directly to the Board.

The decision to foreclose or bring a money judgment action depends on numerous factors, all of which must be researched by the attorney who will then deliver a recommendation to the Board. Sometimes neither path will be an option, and the Board may need to simply wait for a bank to foreclose.

A money judgment action will cause a lien upon the premises and will cover those assessments owed up to the time the action

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SUPPORT BIOLOGICAL LAKE AND POND MANAGEMENT WITH “PROBIOTICS”

By ERIN STEWART - AQUATIC BIOLOGIST, SOLITUDE LAKE MANAGEMENT

There are many sustainable options for the management of lakes and ponds, so it can be difficult to determine which direction to turn when a problem occurs. This is especially true for waterbodies used for recreational activity, irrigation, drinking water storage or any location where pesticides or other traditional management methods may be less desirable or restricted. However, all aquatic resources can benefit from proactive applications of natural and biological products. Beneficial bacteria-based products can be used as a pesticide alternative, or used in conjunction with other products and methods to enhance the efficiency of the treatment.

Bacteria may sound like a bad word in some situations, but these organisms are the foundation of most biological processes within an aquatic resource. Think of them as probiotics or yogurt for your lake, pond or reservoir — they are responsible for breaking down and processing organic material in a process called biological augmentation.

When properly introduced, biological augmentation can help limit

the impact of nutrients like nitrogen and phosphorous, which tend to enter waterbodies through runoff containing fertilizers, animal waste and other organic materials. Without proper management, these materials may accumulate as sludge at the bottom of your waterbody, causing noxious odors, promoting nuisance algae and weed growth and expediting the waterbody's rate of aging. Over time, costly dredging will be required to restore the health and overall volume of the aquatic resource. When beneficial bacteria are in place, they convert nutrients to forms that cannot fuel nuisance plant growth, promote efficient decomposition and prevent the accumulation of organic materials. This, in turn, can help diversify the biological community structure by facilitating the development of “good” algae, diatoms, zooplankton and healthy fish.

Regular applications of these biologicals can be incredibly favorable and help keep beneficial bacteria concentrations and activity high throughout the year. Depending on the particular water quality or vegetation issues within your lake, pond or

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PRESIDENT'S MESSAGE

By TOM LOWENBERG, CPA - FULLER LOWENBERG & CO. CPAs, P.C.
AND CAI-LI CHAPTER PRESIDENT FOR 2017



As I write my final newsletter as President, I wanted to thank the Trade Show committee as well as the vendors and attendees for making it such a wonderful success. A tremendous amount of time and effort goes into the "production" and we truly appreciate all of the efforts. The educational seminars that were developed received such rave reviews, thanks to our knowledgeable presenters.

As I complete my term, I also wanted to thank the CAI Board of Directors for their efforts. Each and every board member not only attends the meetings to share their ideas, but also participates in one or more committees to help the organization perform better. The Board is here to assist the member communities through education and services. If any member has an idea for future seminars, the board is always receptive and encourages the input.

Lastly, special thanks go to Christine Majid, our Executive Director, who handles all of the day to day behind the scenes operations of the association. She keeps everything running smoothly year after year.

Our Board Leadership Development workshop in November again was very well attended and allowed both new board members and seasoned board members to share ideas and solutions. Thanks to Suzanne Borelli and Belfor Property Restoration for supplying the venue and refreshments and also to our instructors David Eldridge, Woody Goldstein and Andrew Nigri.

As we approach the holiday season, I hope to see everyone at our Holiday Party on Wednesday, December 6th. If I don't get to do it personally, my best wishes for a safe and Happy Holiday season to all!

Hope to see you soon. ■

Thomas C. Lowenberg, CPA
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President CAI Long Island

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Long Island Chapter Calendar of Events

Wednesday, December 6th - 6:00-9:00 p.m.
Chapter Holiday Party

Sal's Ristorante

1012 West Jericho Turnpike, Smithtown

Thursday, January 25th - 6:00 p.m.

Chapter Membership Meeting with Seminar

"On Track with Robert's Rules"

Fairfield Corporate Plaza, Lower Conference Center
175 Broad Hollow Road, Melville

March - Chapter Membership Meeting with
"Business Partner-Board Member Speed Dating"
Capital One Bank

275 Broad Hollow Road, Melville

April - Chapter Membership Meeting with
Guest Speaker "Reserve Study" Seminar

May - Board Leadership Development Workshop
for Community Association Board Members
Belfor Property Restoration
60 Raynor Avenue, Ronkonkoma

May - Chapter Membership Meeting with
"Group Therapy II" Seminar

June - LI Chapter's 7th Annual Golf Outing
Spring Lake Golf Club, Middle Island

July - Summertime Celebration Social



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is brought only, requiring multiple and continuous actions. In most cases, even after the judgment is awarded, there are no assets to be recovered nor are there any salaries to levy. Despite this, a money judgment action provides the Board with a possibility of recovering arrears. When a bank is foreclosing, a money judgment may be recommended.

When “non-legal” methods have failed, and a money judgment action is not a viable option, the Board should consider foreclosing on the association’s lien.

» *Fundamentals of a lien foreclosure action*

If a foreclosure action is recommended, what are the stages and what should the Board expect? The first stage we recommend is for a letter to be sent to the owner advising them that the Board has authorized the attorney to move forward with a foreclosure action. This letter gives the owner another chance to either pay the arrears in full or to enter into a Board approved payment plan. After this letter is sent and goes unanswered, the following are the basic stages of the foreclosure action:

- a) A title search is ordered to determine the proper and necessary parties to the action;
- b) A Summons and Complaint are drafted and sent to the appropriate Board member or the managing agent for verification;

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- c) The Summons, Complaint and Notice of Pendency are filed with the Court;
- d) The Summons and Complaint are sent to the process server to be served upon the defendants;
- e) After the defendants are served and the statutory waiting time has elapsed, affidavits of default are drafted (or a summary judgment motion is drafted if a defendant has answered the Complaint) and sent to the Board member or managing agent for signature;
- f) Affidavits, notices of motion and other necessary court papers are filed with the court requesting a referee be appointed to compute the amount due;
- g) Upon appointment of a referee, a referee's report of amount due is drafted, along with accompanying Board member or agent affidavits and sent to the referee for their signature;
- h) Upon receipt of the signed referee's report of amount due, it is submitted to the court along with a proposed judgment of foreclosure;
- i) Once the judgment is signed, an auction date is arranged with the referee;
- j) An auction is held

A lien foreclosure action will typically take 12 to 18 months from commencement to the auction.

» *What happens after the foreclosure auction?*

If there is a successful bidder at the auction, that bidder has 30 days to close on the property. At the closing, the Board will be paid the amount due including legal fees. Once the closing occurs, that bidder, as far as the Board is concerned, is the same as any other owner.

In the event no one bids at the Board's foreclosure auction, the Board becomes the owner, subject to the mortgage. At some time in the future, the bank will finish its foreclosure action and the Board will no longer own the premises. In the meantime, the Board is free and encouraged to rent the premises. Frequently asked questions concerning Board/community ownership of units include:

- a) Who is responsible for paying the taxes? If there is a mortgage on the premises, the bank usually continues to pay the taxes.

- b) Does the Board need to insure the premises? Yes. The Board will need to obtain a property and liability insurance policy.
- c) What if the owner is still living in the unit after the foreclosure auction? It will be necessary to evict the owner. This is common and your attorney will know how to address this issue.
- d) What if repairs to the property are necessary in order to make the property suitable for rental? A cost estimate should be obtained before expending any money on repairs. Most of the time repairs are necessary, but the costs may be recovered through the rental proceeds.
- e) What if we don't want to be landlords? Unfortunately, sometimes the only route to recover arrears is through the foreclosure and rental process.

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ELEVENTH ANNUAL TRADE SHOW – WRAP-UP

By CHRIS BYRNES, ESQ. AND WOODY GOLDSTEIN, CPA – TRADE SHOW CO-CHAIRS

It seems as though it was just yesterday that the Trade Show Committee held its first meeting to begin planning the 2017 event, and now it has come and gone. After many months of hard work by a very committed group of volunteers, as the co-chairs, we can honestly say that the committee was integral to the success of this year's event and we are very appreciative of everyone's efforts.

This year's show featured 66 exhibitors, the most in the past several years, and was attended by approximately 250 board members from communities across Long Island. Judging by the continual buzz and animated conversations we observed around the exhibit space throughout the day, everyone seemed to have enjoyed the show.

A highlight of this year's event was our keynote speaker,

Ronald L. Perl, Esq. a partner in the Princeton, New Jersey law firm of Hill Wallack LLP, representing condominiums, cooperatives, and homeowners associations in New Jersey for over 30 years. Mr. Perl is a member of the National College of Community Association Lawyers and has served as the President of CAI's New Jersey Chapter, the Foundation for Community Association Research, and as National President of CAI. Since 2012, he has been the chair of the CAI Federal Legislative Action Committee and has pioneered the representation of community association interests in Congress. Ron delivered an informative talk about current legislative matters as well as some federal legislation that is in the pipeline.

Once again, we held 6 large classroom-type seminars that covered the following interesting and informative seminars:

- The Board's Fiduciary Duties
- Ask the Experts
- Best Practices
- The RFP Process
- Contractual Risk Transfer
- Ask the Attorneys

In addition, we tried something new this year and held 2 smaller classes, one dealing with the "Treasurer's Obligations" and the other, the "Secretary's Obligations." Judging by the standing room only attendance, and the positive comments we received, we believe that those 2 seminars were an overwhelmingly huge success. We will strive to do similar small classroom seminars at the 2018 show.

As the co-chairs of the 2017 trade show, we are very pleased with the overall turnout and the number of booths sold, as well as with the preliminary feedback that's been received. We will meet with the Trade Show Committee shortly to review this year's event and begin planning for 2018. If you have any suggestions or comments about the Trade Show, please send them to Christine M. Majid, Chapter Executive Director, at info@cai-li.org and she will forward them to us.

Please mark your calendar for the **2018 Trade Show on Saturday, October 13th at the Hilton.**

If you were an exhibitor, don't forget to reserve a booth for 2018 before December 31, 2017 and pay the super-saver price, which is at the 2017 pricing (i.e., member \$850 and non-member \$1,000). If you need the 2018 Super-Saver Booth Reservation form, please contact Christine at info@cai-li.org. ■

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reservoir, a lake and pond management professional may recommend different forms of probiotic bacteria, including liquid, pellet or powdered applications.

Liquid bacteria blends are considered high-performance due to their ability to rapidly neutralize excessive nutrients that are located within the water column. Liquid blends can help to quickly enhance water clarity and quality. Pellet or granular beneficial bacteria applications contain bacteria that naturally settle to the bottom of a lake or pond to reduce organic materials that cause bottom sludge. In moderate or warm climates, the resulting reduction in accumulated sediment can be significant.

Beneficial bacteria are an excellent solution for the reduction of excessive nutrient rich organic matter that cause bottom sludge and nuisance vegetation, but they don't have to be utilized



Beneficial Bacteria: *Beneficial bacteria acts much like a natural probiotic for your lake or pond, aiding with the efficient decomposition of organic materials and excessive nutrients, which can help prevent the development of nuisance algae and vegetation and facilitate the growth of healthy organisms.*



Water Quality: *Over time, organic runoff builds up as muck at the bottom of lakes and ponds. As part of a proactive management plan and in conjunction with water quality testing, biological augmentation can be used to naturally and sustainably limit the accumulation of materials while improving the water quality and beauty of the waterbody.*

independently. When applied by a licensed professional, some biological products can also be used in conjunction with herbicides to aid in the decomposition process of submerged and emergent vegetation.

A professional will determine the rate and frequency of beneficial bacteria and/or herbicide applications by conducting water chemistry tests or considering the targeted issue. However, the best way to achieve your overall lake or pond goals is to ensure the proper products are being utilized. There are many selections available on the market, so it is very important to choose a quality option with field data and science supporting the claims. Always rely on your lake and pond management company for beneficial bacteria recommendations, as well as guidance on strategies to improve aeration, beneficial buffers, water quality and native wildlife populations. Your water will thank you.

Erin Stewart is an experienced Aquatic Biologist with SOLitude Lake Management, an environmental firm providing a full array of superior lake, pond, wetland and fisheries management services and solutions. She can be reached through the website www.solitudelakemanagement.com.

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- f) Who should we rent the premises to? The property should be listed with a real estate broker knowledgeable of the rental market and the Board's requirements.
- g) Do we tell the renter about the bank's foreclosure action? Yes. When your attorney prepares the lease, he/she will add a clause in the lease advising the tenant of this possibility. When the bank does eventually foreclose, these tenants are usually given time and money by the bank in order for them to move.
- h) Can we collect rent after the bank forecloses? No. After the bank forecloses, the new owner of the property is responsible for making the monthly payments. The bank is also not responsible for any arrears that remain.

It has been our experience that while foreclosing on and renting a unit is not the ideal solution, its benefits far outweigh any drawbacks. Not every foreclosure will result in recovery of all of the arrears. However, every unit that is not foreclosed upon will continue to amass arrears. If the community understands that the Board has a solid collection plan of action, which includes foreclosure, the common charges and assessments will be the first bill that is paid as opposed to the last. ■

Comments or questions? Feel free to reach Laura M. Endres, Esq., of Taylor, Eldridge & Endres, P.C., at her office at 631-265-5550.



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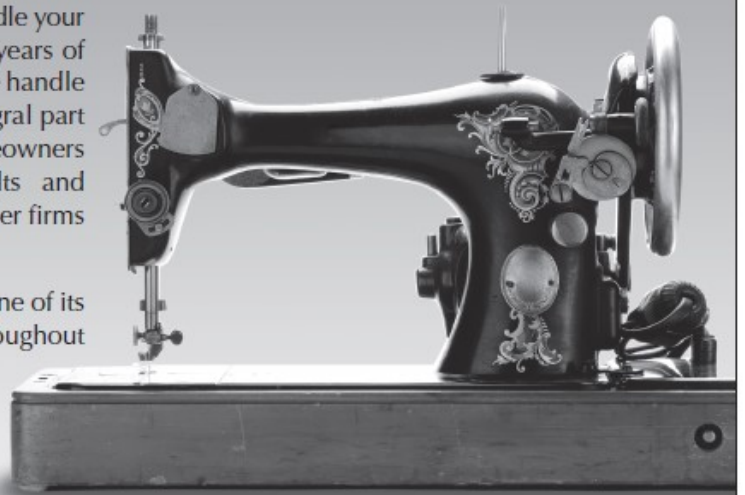
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