

CAI - LI Chapter News

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ON THE BOARD'S AGENDA: AN INTRODUCTION TO CONDOMINIUM PROPERTY TAX APPEALS

By CHRISTOPHER P. BYRNES, ESQ. - SCHRODER & STROM, LLP



As residents of the New York Metropolitan Area, we are burdened with some of the highest property taxes in the United States. Fortunately, New York State law allows

homeowners to challenge their property tax assessments to reduce their annual payments. This highly specialized area of law, known as Tax Certiorari, has become a cottage industry on Long Island. This article will explain some of the idiosyncrasies of challenging tax assessments for a condominium, which vary between taxing jurisdictions.

Section 339(y) of the Real Property Law, (part of a larger piece of legislation known as the Condominium Act), requires that each condominium unit be taxed individually. In most jurisdictions, condominiums have restricted assessments, meaning that the Assessor is prohibited from valuing individual

units based on their full market values (e.g. sale prices). Instead, the Assessor is required to value the entire condominium as if it were a rental apartment complex, and then allocate the aggregate value among the individual units. This requires the use of a complex appraisal methodology known as the Income Approach to Value. The result is that condominium units with restricted assessments usually have far lower taxes than similarly priced single-family homes.

There are several municipalities on Long Island where certain condominiums do not have restricted assessments. In Nassau County, the Real Property Tax Law provides that all property be classified in one of four classifications, based on use. Condominiums of three stories or less are in the residential Class 1 along with single-family homes and are valued based on their full market values. Likewise, in 1984, the Town of Islip adopted a two-class system of taxation consisting of Homestead (residential) and Non-Homestead (commercial) classifications. Condominiums built after 1984 are in the Homestead tax class and are taxed based on their sale prices. Condominiums built prior to 1984 are

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BACK TO BASICS: NANOBUBBLES VS. FOUNTAINS VS. SUBMERSED AERATION

By BO BURNS, BIOLOGIST & MARKET DEVELOPMENT MANAGER - SOLITUDE LAKE MANAGEMENT



Oxygen is essential to life, including the desirable life that lives below the surface of our lakes and ponds. When pollution, invasive aquatic weed growth and nuisance algae blooms cover the surface of the water, this prevents dissolved oxygen, or DO, from reaching the areas that need it. The result — poor water quality, bad odors, bottom muck, massive fish kills and potentially deadly

toxic algae blooms.

Luckily, several lake and pond aeration solutions are available to naturally correct imbalanced DO conditions — each with their own unique benefits and limitations:

Floating and architectural fountains are one option for aeration in lakes and ponds. In addition to serving as an aesthetic focal point, properly-sized fountains provide essential water column mixing in shallow waterbodies. As fountain water falls from the air in pleasing patterns, it bursts across the



surface, accelerating the release of submersed gases, helping to reverse nutrient pollution, and introducing beneficial DO into the top layer of water. When the fountain is turned off, however, these benefits can subside.

Another form of aeration that is recommended in large lakes and ponds is submersed aeration. In contrast



to fountains, submersed aeration systems utilize an on-shore compressor to pump air through a subsurface tubes and diffusers that oxygenate and circulate the

water from bottom to top. As bubbles rise from the depths to the surface, they increase DO throughout the waterbody and disrupt undesirable stratification. Like floating fountains, submersed aeration systems help convert nutrients to more diluted forms that cannot sustain nuisance aquatic weed and algae growth, though they do not directly target these infestations. For the best results, these systems should be placed in lower depths as they may not properly circulate shallow water.

New aeration alternatives, like nanobubble technology, have helped maximize the benefits of both fountains and submersed aeration systems. Similar to “traditional” submersed aeration systems, nanobubbles are produced by compact on-shore generators, but they are about 1 million times smaller than ordinary bubbles and have a strong negative surface charge. As a result, they provide long-lasting oxygenation within the water column — and even the sediments — for up to 2-3 months without popping. Because nanobubbles do not rise to the surface, they do not offer the vertical mixing benefits provided by fountains and standard diffusers.

Nanobubbles are not only effective at reducing odors, breaking down bottom muck and restoring water quality; some manufacturers have registered their equipment as a pesticidal device with the Environmental Protection Agency (EPA), meaning it can be used to naturally eradicate



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nuisance algae and toxic cyanobacteria. And unlike traditional aeration systems, you don't have to own an actual nanobubble system to reap the benefits. Through an annual management plan, nanobubbles can be introduced into your waterbody via recurring when the aquatic ecosystem needs it. This approach helps ensure your waterbody receives the custom, balanced care it requires without the need to purchase or permanently install a nanobubble system on your property.

Each of these lake and pond solutions works differently — and they accomplish very different things. Using them in a variety pairing based on your given situation may help better target your unique water quality problems. No matter how you use your waterbody, it's worth leveraging these natural management tools to ensure the future of your freshwater resource. ■

Bo Burns specializes in the research and development of new technologies using more than 30 years of industry experience along with a Master of Environmental Management degree in Resource and Wetland Ecology from Duke University. Learn more about the sustainable management of lakes, stormwater ponds, wetlands and fisheries at www.solitudelakemanagement.com/knowledge.

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CAI - LONG ISLAND NEWSLETTER

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 (www.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, 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.

Quarterly Deadlines

Winter Issue - January 31

Summer Issue - July 31

Spring Issue - April 30

Autumn Issue - October 31

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If you would like to reserve space in the next newsletter, just let us know the preference of your ad space:

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PRESIDENT’S MESSAGE

By ERIC B. CLEMENTE - ALURE HOME IMPROVEMENTS AND CAI - LI CHAPTER PRESIDENT FOR 2020



To all of our members and friends -
 Let me start by telling you what a fantastic job you have done! You have not only successfully navigated what may be modern history’s largest pandemic, but you’ve done so with grace and positivity. I have received an abundance of emails with great questions, feedback, feedforward, and my favorite – letters of appreciation. Our Chapter and its leadership have

worked extremely hard to provide resources and assistance to our members during such unprecedented times.

I hope you are finding a way and some time to enjoy the lovely summer weather! I would like to wish your family continued wellness and safety during these scary times. Fortunately, due to being “NY Strong,” we have been fortunate enough to see some small glimpses of a normalcy we all dearly miss.

In an effort to maintain safety, we are forced to continue the changes we implemented in March for our operations. We will continue to host webinars covering some very exciting and

important topics covered by well-respected industry experts, including, but not limited to, Edward Taylor, Esq. (Taylor, Eldridge & Endres, P.C & Past President), Edward Katta (President of Katta Protective Services), Mariah Pohl (Specialist from Solitude Lake Management) and many more.

Sadly we have been forced to cancel the Annual Trade Show for 2020. The safety of all of our members is our number one concern and we look forward to its return and hosting the event in 2021.

I am excited to announce the launch our first ever **Marketing Campaign!** We will be running advertisements on the radio as well as digital ads online. This campaign will allow us to grow our membership which will greatly benefit all of our Chapter members by bringing fresh ideas, resolutions, new friends, and legislative strength all while creating unification for ALL those who live in Community Associations such as yourself! We would not be able to do this campaign without the help of our sponsors: LP SmartSide, WaterHeaters.com, James F. Sutton Agency Ltd., and National Cooperative Bank, as well as our Annual Sponsors: Accredited Property Management, Alliance Association Bank, Alure Home Improvements, Belfor Property

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Continued from Page 5

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Please don't forget our charity of the year, Camp Good Mourning. This is a fantastic charity that provides FREE, overnight, weekend bereavement camp programs for children, ages 7-17, who are coping with the loss of a parent/guardian, and/or sibling. Through our support, we can help these children in receiving the proper support so they can grieve peacefully and properly. Please visit <https://www.campgoodmourning.org/> if you would like to make a donation of any amount.

I'd also like to welcome our newest members and business partners:

- Artist Lake Condominium**
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- Plymouth Estates at Mount Sinai**

Please don't forget to continue to actively check your email and our website regarding the most up to date information on all events and important resources. Please also feel free to contact me (eclemente@alure.com) with any questions or suggestions you may have as well as any inquiries for your needs.

Please continue to support our Chapter's annual sponsors and business partners as we would not be able to provide you with these great programs and resources without their support. We have a **FANTASTIC** group of strong, smart, and educated business partners who are eager and willing to do whatever they can for our members!

Sending positive thoughts! Stay safe! ■

Please feel free to contact me directly with ANY questions, concerns, or suggestions you may have at 516-396-9023 or eclemente@alure.com.

Continued from Page 1

grandfathered into restricted assessments. Additionally, several Incorporated Villages throughout the Island have adopted this Homestead/Non-Homestead classification.

The Condominium Act allows unit owners to designate their Board of Managers as their agent to commence and manage a property tax appeal. This designation must be made in writing at the outset of the appeal and does not have to be unanimous. The Board may proceed with whatever subset of unit owners wish to participate in the appeal. Only participating unit owners can benefit from any settlement and be charged their contingency share of legal fees and litigation expenses. As many readers know through experience, it can take several years for a condominium's property tax appeal to reach its conclusion.

In the Town of Brighton in upstate New York, a controversy arose regarding whether the Board (read: their attorney) is required to obtain a new authorization from each participating unit owner every year of the appeal. This is, frankly, very burdensome and time consuming for larger condominiums. Thankfully, in a 2019 case titled Eastbrooke Condominium v Ainsworth, the New York State Court of Appeals ruled that a unit owner can confer authority to the Board on an ongoing basis until the litigation concludes, or the authorization is formally rescinded.

For condominiums without "restricted assessments," individual

unit owners may avail themselves of the Small Claims Assessment Review (SCAR) procedure to challenge their tax assessments - the same as any individual homeowner. On Long Island, there are many non-attorney tax grievance firms who contract with unit owners on an individual basis to utilize this forum. A SCAR petition will supersede any appeal brought on behalf of the Board for the specific unit on which it was filed. Condominiums with restricted assessments, however, are not permitted to file in the SCAR forum - making the Board's appeal the only viable avenue for tax relief.

One of the Board's essential functions in a tax appeal is the selection of legal counsel. Tax Certiorari is a highly specialized field, with procedural rules and deadlines that differ greatly from other areas of law. The Board's go-to attorneys for general legal matters likely do not handle tax appeals. It is important to hire experienced counsel to ensure that rules are followed, and deadlines are met. Some things to consider and discuss when interviewing counsel are the legal fee charged, advancement of filing and appraisal fees, communication with unit owners, distribution of tax refunds, availability of attorneys and staff to answer questions, and appearances at Board as well as homeowner meetings.

In communities with restricted assessments, certain information

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must be disclosed to the municipality to move the case forward. The Board will need to provide a copy of the offering plan with descriptions of the size and layout of different models. Copies of leases from within the community are critical to establish rental values. Year-end financial statements are required to establish an expense ratio in an income approach valuation analysis.

In communities that do not permit rentals, it may be prudent to retain a commercial real estate appraiser to estimate rental

values based on market data. These types of reports can cost several thousand dollars but are extremely useful in settlement discussions. They provide an objective guideline from which to evaluate settlement offers. Once the appraiser is retained, he/she will want to review the information described above, and perform an on-site inspection. The Board should expect to provide access to all common elements (clubhouse, recreational facilities, etc.) and solicit volunteers from the community to provide access to their units. As a rule of thumb, the appraiser will want to see the interior of at least one of each unit type.

In condominiums without restricted assessments, the attorney will still need a copy of the offering plan but will likely not request financial or rental information. Recent sale prices from within the community are the key factors in determining the merits of the appeal. The attorney may ask for guidance in explaining discrepancies in the sale prices within unit types. Newly renovated units, for example, may sell at higher prices than an outdated unit of the same type.

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COMMUNITY ASSOCIATION INSURANCE CLAIMS PROCESS

By JOEL W. MESKIN, ESQ., CIRMS, CCAL FELLOW, MLIS, EBP - MCGOWEN PROGRAM ADMINISTRATORS

I. The Claim Process begins **before** insurance is purchased!

- Shop for a Community Association Insurance Professional, not the Policy.
- Purchase the best Coverage; avoid the seduction of the cheapest price.
- Beware of the Insurance Professional selling price and not coverage.
- Require the Insurance Professional to explain their claim role.
- Insist that you receive complete copies of every policy and a schedule of Insurance.

II. When do you **tender** (submit) a matter to an Insurer(s) for defense and indemnity?

- **Tip:** If you are asking the question, you have answered the question.
- The “CAM” or the Insured(s) should submit it to the

Association’s Insurance Professional. If you have no CAM, designate a single board member to be the contact with the Insurance Professional.

- The Insurance Professional should advise if a matter should be submitted to the insurer, and if so, which insurer(s).
- The Insurance Professional or attorney advice received **MUST** be confirmed in “writing!”

III. If the claim is a “liability claim” also contact the association’s attorney.

- Is there an insurance policy that should pay for the defense and or indemnity of the association, board, employee, volunteer or CAM (collectively “Insured(s)”)?
- Is there a third party that is responsible for the association’s defense and or indemnity notwithstanding the insurance (i.e. contractor, professional, or another entity agreeing to indemnify in a contract)?

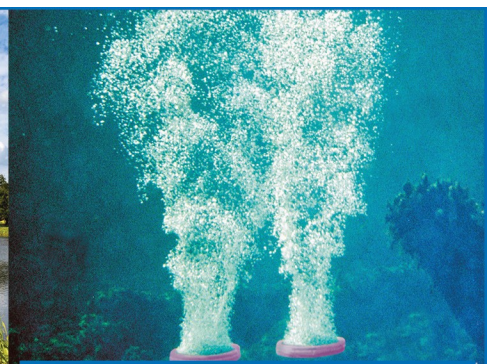
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- Make sure all the association's insurance policies, contracts and governing documents, minutes and rules **are in order** to give expeditious access to your association counsel, or the insurer appointed attorney.
 - **Caution:** As a general rule, no insurer is required to provide coverage, including defense fees, until it has given written consent to the Insured(s). Accordingly, do not assume corporate counsel will be reimbursed for any pre-tender fees.
- IV. When a Claim is received, the Insured(s) MUST protect the association's interest.
- Insured(s) should not discuss **ANYTHING** about the Claim between and amongst themselves, or anyone else (including a spouse) other than the timing of an attorney meeting! If you do, there will be no privilege to protect those communications. These discussions **MUST** only be discussed with counsel in preparation of litigation or defense of a Claim. Otherwise, these discussions are discoverable.
 - There is **NO** "board member privilege." There is **NO** "pillow talk" privilege.
 - Board members **MUST NOT** communicate between and amongst one another by e-mail or any other form of electronic communication. This type of board communication should never occur, especially in light of litigation. These are all discoverable, and may constitute an unauthorized board meeting.
- V. The Claim Representative is your friend; your Insurance Professional is your Advocate.
- **Claim Reps want to pay your claim!** Treat them as a partner. Board members are fiduciaries tasked with protecting the association's interest. Treating a claim rep as an adversary is not in the association's interest. Psychologically, people (claims reps included) want to help Insured(s) who are nice and civil.
 - Claim Reps are creatures of audit. They must document the claim file to support any payment. Accordingly, make their job easier and provide the documents and information they request.
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Long Island Chapter Calendar of Events

In light of the continued health crisis, the Board is working on rolling out a series of dates for webinar topics as presented below. As the schedule is formalized, we will send out updates via email so you may mark your calendar and register.

*Tuesday, September 15th - 11:00 a.m. to 12:00 p.m.
Chapter Educational Webinar*

“Best Practices for Providing Security Guard Services at Gated Communities”

Presented by Katta Protective Service LLC

*Tuesday, September 29th - 11:00 a.m. to 12:00 p.m.
Chapter Educational Webinar*

“Why Proactive Lake and Pond

Management Is More Cost-Effective”

Presented by SOLitude Lake Management

*Tuesday, October 13th - 11:00 a.m. to 12:00 p.m.
Chapter Educational Webinar*

“Banking and Technology”

Presented by National Cooperative Bank (NCB)

*Tuesday, October 29th - 11:00 a.m. to 12:00 p.m.
Chapter Educational Webinar*

“Bullies in Communities”

Presented by CAMCO Services of NY, Inc. and Taylor, Eldridge & Endres, P.C.

*Tuesday, November 10th - 11:00 a.m. to 12:00 p.m.
Chapter Educational Webinar*

“Virtual is the New Reality”

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To REGISTER or to READ MORE about each webinar topic, visit our EVENT PAGE by clicking below —

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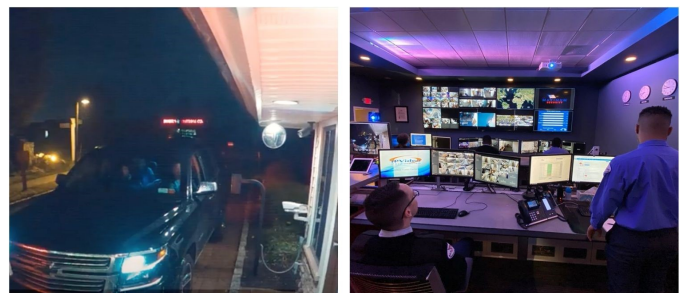
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- Every insurance policy has a “Cooperation Clause.” Failing to cooperate may impact the adjustment of a claim and the rights and coverage in the policy.

Admonition: The Association is a Business. Leave Emotion and Principle at the Door! ■

Do you have questions or comments? Joel may be reached at his office at (800) 545-1538 x2240, cell (216) 385-5610, or via email at jmeskin@mcgowanprograms.com.

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GET RID OF BUDGET STRESS — FOR PROPERTY MANAGERS

By JULIE ADAMEN, PRESIDENT - ADAMEN INC.



Julie Adamen

"I can't think about that, it's budget time!"

"Don't talk to me, it's budget season!"

"Look at me! Busy, busy, busy! Budget time!"

I have one word to say: "BUNK!"

Not "bunk" to the fact that managers are busy and stressed. You are busy and stressed. But let's face it – much of the stress

you feel at budget time is because you didn't start those budgets soon enough, because you are busy with other stuff. All of a sudden, it's October and you have 8 budgets to be approved and mailed out. How to break out of the stressful budget rut? It's not hard, just a little planning, a little preparation, the right presentation and sticking to a schedule.

PLANNING

Assuming a FYE of 12/31, you should start planning your budgets somewhere in the latter part of June or the first week of July. If you foresee problems with the budget process, have to work with a cantankerous committee or have 10 or 12 budgets to prepare, start a little earlier. What's that you say? Isn't this just too early? After all, you only have 5 or 6 months' worth of financial statements to work with, right? No, not right: You have twelve months - or more, if you want - of financial statements so you can put together a reasonable picture of one year's expenses.

DO YOUR HOMEWORK

Call the vendors - do they anticipate an increase next year? How about utilities? What percentage increase will be coming? 2%? 5%? Any other variances you know or anticipate to be upcoming? This process will probably take you 7 - 10 working days to complete if you work on all your accounts during this time, including consideration for the rest of your duties. When you are finally done gathering this information, it will be late July. Now that you have all pertinent information for

each line item, you can prepare your preliminary budget.

PREPARING THE PRELIMINARY BUDGET

Plug in time to work on your budgets just as if they were a meeting or appointment. Close your door (if you have one) let your calls go to voicemail and let email sit in your in-box. They'll survive an hour or two without you.

Format. An excel spread sheet is the optimal budgeting tool for you to use because as the numbers inevitably change, you'll be able to plug them in and they will be calculated quickly and accurately. Not to mention it prepares you for next year's budget.

Reserve contribution: The managers' budget conundrum. Assuming you have a reserve study in hand... It's really your duty to plug in the recommended amount unless you (and the Board) know for a fact that it is inaccurate. That said... Plugging in the recommended amount and then presenting only that as a preliminary budget to your Board/committee will likely give them heart failure. Try this: Prepare two budgets, one with the recommended reserve contribution (you've done your duty) and another with what the committee or Board wants to work with (unless your management company has a differing policy regarding this issue).

BUDGET PRESENTATION

What can you do to make understanding and absorbing

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the budget easier for your committees and Boards? Submit your budget with a pie chart (or bar chart) and insert a picture of the community as a part of your excel spread sheet. The chart will give a great visual of what money is going where, so they know at a glance that the management contract is not the biggest line item (far from it). Inserting a picture of the community brings home the fact that the budget is not an abstraction; it truly has meaning and impact on those who reside within.

Time to present: August. Yes, it seems early and you are going on vacation and much of your Board is as well. Again, it's not a surprise and vacation schedules are usually made at least a month or two in advance so these commitments should be factored in, and you did that by starting your budget prep in June, right? So talk to the committee or Board members, and schedule a meeting as soon as possible.

Follow up. If you can't get an August meeting scheduled, at least email the budget out and follow up individually with Board/committee members for their feedback. This way you will have an idea where each association is going with their process and you can schedule your time accordingly. Does it look like smooth sailing? Then you can let this one wait and pick it up again in September. Problems? Issues? Have a rogue Board or committee from hell? Better to know now so you can allot the amount of time you'll need to see it through to approval and still give yourself enough time for distribution. Remember: Even though the budget may now be in the hands of others, it is still up to you to drive the process through to the finish.

TAME THE STRESS!

Managers, stress at budget time is almost wholly within your control if you utilize some basic time management tools: Plan ahead, start early and drive the process to conclusion while staying fluid enough to work on issues contingent to the budget AND your "day" job. Like so many things in our business, if it doesn't get handled when it should, or earlier, it will go from snowball to avalanche in short order. Procrastination is the enemy, especially when it comes to budgets. ■

Julie Adamen is the principal of Adamen Inc., a national consulting and employment firm specializing in the community management industry. She is a recognized and designated expert in community management and association and management company

operations. She is a prolific author, educator, motivational speaker and trainer for community managers and Boards of Directors. If you have any questions or would like further information about Julie or her company's services, contact her directly - she's easy to reach online at [Just Ask Julie](#), by email at Info@Adamen-Inc.com, or toll free at (877) 368-1509.

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Finally, the Board is the ultimate decision maker throughout the tax appeal. As such it has plenary authority to approve or reject settlement offers or proceed to trial. These decisions should be made in consultation with the attorney. A settlement offer should treat each participating unit owner fairly and equitably. While it is unlikely that the final settlement will directly mirror the values in your appraisal or sales analysis, it should be a reasonable compromise based on the municipality's position. ■

Chris handles all aspects of property tax assessment litigation, from property valuation and negotiation to trials and appellate advocacy. He currently sits on the CAI Long Island Chapter Board and held the position of Chapter President in 2018.

Do you need more information? Feel free to reach Chris by email at Chyrnes@nytaxreview.com, or by phone at (516) 742-7430.

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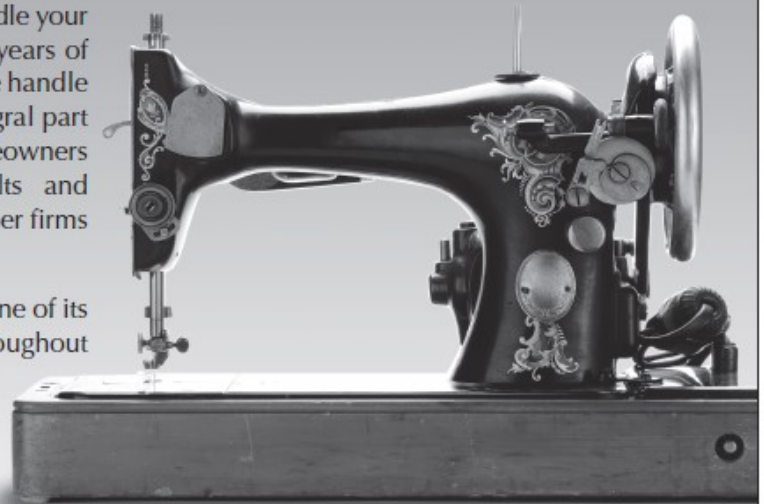
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