

# Currents

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## Sit, Stay, & Learn

*Assistance Animals in Virginia  
Common Interest Communities*



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Articles, ads or other submissions must be submitted prior to the dates listed below for inclusion in the issue immediately following. All dates are firm. If submission is missed, updates will be in the following issue.

Q2 2021  
April 15th

Q3 2021  
July 15th

Q4 2021  
October 15th

Q1 2022  
January 15th

Currents encourages and welcomes articles on any topic relating to the many "Currents" of community association interest. Please include a twenty to thirty word description of the author at the end of the article. All articles are subject to editing.

Please send your submissions to:  
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## PRESIDENT'S *perspective*

What a long, strange trip it has been. I joined CAI in 2008, the same year the stock market crashed, and we had a government bailout. Times were tough and people were scared.

I attended a thing called "Party with the Pros" in November of 2008 and was introduced to a lot of the key members of CAI. Of course, I asked a lot of questions about how I could get the most out of my membership. 100% of the people said to get active and join a committee to get to know people. One month later I attended the Holiday Awards Banquet and sat in the back as I watched members go up on stage to accept different awards. I thought to myself, "I am going to be on that stage one day"!

Fast forward to 2021 and I am now the Chapter President. This is proof that even the guy in the back row can make a difference by joining committees, staying active in the Chapter, and being surrounded by some of the most brilliant minds in this business.

We are in a world-wide pandemic, another tough time financially for Americans, maybe even worse than the crisis in 2008. The one constant in both is CAI which allows its members to thrive with the ability to adapt as situations change. CAI offers access to any members who are dedicated to making a difference in their communities.

I am honored to be the 2021 President and will serve to the best of my ability while being supported by a talented and dedicated staff and Board of Directors. Please bear with us as we work through the issues associated with the pandemic. I know we all look forward to getting back to a more normal life.

McKown Out!



*Robert McKown*

**Bob McKown**  
2021 Board of Directors President  
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# FROM THE *executive director*

Now that we're all set up in our new office, it's time to get back to business! Well...kind of. With Covid numbers still high, and the gathering limit still low, we're continuing to conduct our business virtually. We know your communities and career education are important to you, which is why we're in the process of preparing the CA Day education for a virtual release in April. Additionally, we're continuing to schedule live webinars, collect content for the magazine, and share valuable information on our social media.

But this is CAI. We know what you really want is to kick back, drink in hand, and catch up with your CAI friends. Enter: Virtual Bingo. With a twist this year! We're offering our business partners the opportunity to host their own bingo event - either a lunch time break or an evening happy hour. They pick the date, the prizes, the numbers - and we're just along for the ride! So come out...er, log on...and show them your support and maybe even win a gift card or two.

We're also hosting "Coffee Talks" for our partners this year, to help them reach our membership at a time when an in-person trade show isn't possible. We know you're busy, so we won't take up too much of your time, but again I'd ask you to please come and show your support, learn a little something, and keep your industry connections strong.

And for those of you holding out hope for in-person events, the Virginia Leadership Committee is preparing to save the day! We are cautiously optimistic that we will be able to hold this year's event as we normally would, at the Omni Homestead Resort in Hot Springs, Virginia.

You can find information about all these offerings and more on our website & social media accounts, and we're always here for you at the Chapter office if you need us.



A handwritten signature in black ink that reads "C. Hinckley".

**Cariese Hinckley**  
Chapter Executive Director  
Southeastern Virginia Chapter Community Associations Institute



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# The Almighty Injunction

By **Gregory S. Bean, Esq.**, *Gordon & Rees*

In the world of enforcing covenants, deeds, and restrictions, injunctions are one of the most powerful tools association managers have in their arsenal. An injunction is an order from a Court either requiring a homeowner to comply with particular rules or restrictions or ordering the homeowner to cease violating the restrictions. Associations can request injunctive relief whether or not the association wishes to seek monetary damages against the homeowner.

Courts are often willing to award injunctions for several reasons. First, in most cases where injunctions are appropriate, the association has taken many steps prior to filing suit to enforce the covenants, including communications with the homeowner, calling the owner to a due process hearing of the board, assessing non-compliance charges, and oftentimes demands for compliance from the association's attorney. The association can then plead with the Court, arguing that there is little else the association can do to enforce the restrictions. Judges are frequently sympathetic to these arguments, especially considering the fact that the restrictions are legally deemed to be a contract with the homeowner, and if the homeowner refuses to

abide by the contract, then the only avenue for redress is with the Courts. Additionally, most violations affect the neighboring properties and often decrease home values and/or make it difficult for neighbors to sell their property.

Additionally, in Virginia, if an association fails to enforce its covenants and restrictions, there is a possibility that it can be deemed to have waived the right to enforce those restrictions at a later date. Think of it like a city that declines to enforce zoning ordinances. When developers construct buildings in violation of the zoning restrictions, and the city refuses to enforce those ordinances, it would be unfair for the city years down the road to make an about-face and decide that those same buildings are now out of compliance. The city will be stuck with their prior actions because the developers relied on the non-enforcement to their detriment. Similarly, if an association fails to enforce restrictions, and a homeowner takes actions over a period of time in violation of the restrictions, the homeowner can argue that the association waived its right to enforce the covenants. Thus, when an association goes to Court to obtain an injunction, it should argue that, unless it utilizes every

remedy available to it (including injunctive relief), it could have permanent implications in that the association may lose the ability to enforce that covenant in the future.

An injunction is so powerful because it can be immediately enforced when there is a violation of the injunction. There is no need for time-consuming notices, board meetings, or other procedural mechanisms. The association simply files a Motion for Order to Show Cause with the Court and asks that the Court find the homeowner in contempt of the injunction order. The Court has several options to enforce the injunction, including assessing fines and attorney's fees and, if the homeowner continuously refuses to comply with the injunction and/or show up for hearings on the violation, issuing a *capias* for the homeowner's arrest. Once the *capias* is effected, the homeowner must appear for the hearing or face actual jail time. It is unlikely that a Court will actually issue jail time to the homeowner, but in extreme cases, a *capias* can jolt the homeowner into realizing just how serious the association is about enforcement. Additionally, the Court may very likely award a judgment in favor of the association for the attorney's fees charged in such an action, further encouraging the homeowner to comply.

In seeking an injunction, the association should try to be as broad as possible. While some judges will only award an injunction to address the specific violation at issue, depending upon the type of violation, others may be willing to sign injunction orders preventing the homeowner from violating the covenants and restrictions in any manner. This type of inclusive injunction gives the association great power to bring the homeowner to Court whenever there is a violation. Associations should take care not to abuse the authority of the Courts by bringing a Motion for Order to Show Cause for each violation, but for repeated violations, it can help associations get right into Court in order to enforce the injunction without the need to file additional preliminary pleadings.

Injunctions help associations cut through administrative red tape and efficiently enforce their covenants and restrictions. When filing suit for a breach of the covenants or rules and regulations, associations should strongly consider seeking broad injunctive relief against the homeowner.



Greg Bean is a partner with the law firm of Gordon & Rees, where he practices Community Association Law. Gordon & Rees is a national law firm with over 1,000 attorneys in all 50 states, and Greg works out of the firm's Williamsburg office.



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# Sit, Stay, and Learn:

## *Assistance Animals and Virginia Common Interest Communities*

By **Kathleen W. Panagis, Esq.**, Vandeventer Black LLP

Virginia common interest communities (property owners' associations, condominium associations, cooperatives, and time-shares (individually, "CIC", and collectively, "CICs")), are subject to the federal Fair Housing Amendments Act of 1988 ("FHA") and the Virginia Fair Housing Law ("VFHL"). Together, the FHA and VFHL prohibit discriminatory housing practices against individuals based on their race, color, religion, sex, national origin, familial status, handicap or disability, and the VFHL provides additional protection to individuals based on their elderliness, sexual orientation, gender identity or status as a veteran.

When it comes to the intersection of CICs and assistance animals, this falls within the purviews of both the FHA

and VFHL because it involves a protected class—specifically, individuals with disabilities. Individuals who have disabilities may need to seek reasonable accommodations from CICs in rules, policies, practices or services that prohibit individuals with disabilities from having assistance animals on the common areas/common elements and/or in the dwellings. The FHA and VFHL make it unlawful for CICs to refuse to make reasonable accommodations for persons with disabilities that may be necessary to afford such persons an equal opportunity to use and enjoy a dwelling. Accordingly, CICs have obligations under the FHA and VFHL to provide reasonable accommodations in rules, policies, practices or services when needed.

## Fair Housing Laws v. Americans with Disabilities Act and Virginians with Disabilities Act

It is important to point out that the focus of this article is on assistance animals in the context of the FHA and VFHL and not the Americans with Disabilities Act (“ADA”) or its state counterpart the Virginians with Disabilities Act (“VDA”). Oftentimes, the ADA/VDA and FHA/VFHL are mistakenly believed to be interchangeable. Although both sets of laws aim to protect individuals with disabilities, the ADA/VDA and FHA/VFHL are fundamentally different. The ADA and VDA prohibit discrimination against individuals with disabilities in public accommodations (e.g., restaurants, movie theatres, hotels, shopping centers, etc.), employment, and in the provision of public services, whereas the FHA and VFHL apply to residential housing such as CICs.

### Who Qualifies as Having a Disability?

The FHA and VFHL define a person with a disability to include individuals (a) with a physical or mental impairment that substantially limits one or more of such person’s major life activities; (b) with a record of having such an impairment; or (c) regarded as having such an impairment. A “physical or mental impairment” may include any of the following:

(i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory,

including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or endocrine; or

(ii) any mental or psychological disorder, such as an intellectual or developmental disability, organic brain syndrome, emotional or mental illness, or specific learning disability.

“Physical or mental impairment” includes such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; autism; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; human immunodeficiency virus infection; intellectual and developmental disabilities; emotional illness; drug addiction other than addiction caused by current, illegal use of a controlled substance; and alcoholism.

The term “substantially limits” “suggests that the limitation is ‘significant’ or ‘to a large degree.’” The term “major life activities” includes caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Both the FHA and VFHL provide protections to a person with a disability who resides or intends to reside in a dwelling, as well as any person associated with an individual who has a disability. Given the wide-ranging list of conditions, diseases and disorders that qualify as disabilities, it should come as no surprise that some disabilities are observable while others are not apparent. This causes confusion for CICs and requires care in deciding how to handle a request for a reasonable accommodation.



### What Does “Assistance Animal” Mean?

You may have heard people refer to their dogs (or other animals) as service animals, companion animals, support animals, emotional support animals or therapy animals. Under fair housing laws, all of these animals are generally considered assistance animals so long as the animal assists a person with a disability. The FHA defines “assistance animal” to include (a) service animals, and (b) other trained or untrained animals other than service animals that do work, perform tasks, provide assistance and/or provide therapeutic emotional

support for individuals with disabilities. Service animals, therefore, are a specially defined subset of the broader term “assistance animal”.

A “service animal” is a dog (or miniature horse in limited circumstances) that “is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.” The fair housing laws include not only trained service animals, but also other trained or untrained assistance animals that do work, perform tasks, provide assistance and/or provide emotional support. Under the fair housing laws, therefore, the phrase “assistance animal” includes a service animal, as well as an emotional support animal, therapy animal, companion animal or other animals that assist a person with a disability

Assistance animals can include animals that are specially trained to perform a service, such as warn an individual of low blood sugar levels, alert an individual who has a hearing impairments or guide an individual who is visually impaired, as well as an animal that is not specially trained, but helps alleviate symptoms of PTSD and anxiety, provide emotional support that alleviates a disability-related need. Assistance animals are not considered pets because they do work, perform tasks, provide assistance and/or provide emotional support for individuals with disabilities.

Assistance animals are commonly dogs; however, other common household animals can serve as assistance animals as well (e.g., dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal). If a person seeks an accommodation for an assistance animal other than the listed common household animals, the animal will be considered a “unique animal” and the requester has a substantial burden to demonstrate the disability-related need for the animal. Further, and of significance, assistance animals are not required to be trained or certified.

## Types of Reasonable Accommodations that May be Needed

Typically, requests to have an assistance animal in a CIC come in the form of a reasonable accommodation to a CIC’s pet or animal restrictions or rules—meaning, a person with a disability may need a CIC to grant an accommodation (e.g., change, adjustment, or exception) to its pet or animal rules, practices, policies or services when the accommodation is necessary to afford that person an equal opportunity to use and enjoy a dwelling in a CIC. Subjecting a person with a disability to the same pet or animal rules or policies as others may have a discriminatory effect on such person, hence the need for the accommodation.

Accordingly, a CIC’s pet or animal rules or policies may need to be adjusted for the individual with a disability because such rules do not apply to assistance animals. For example, fair housing laws prohibit CICs from charging pet fees or deposits for having an assistance animal in a dwelling. Other accommodations that may be needed are exceptions to a ban on animals in a CIC, animal size and weight limits, number of animals in a dwelling, and breed restrictions.

Even with an accommodation provided to a pet or animal rule or policy, a person with an assistance animal is still responsible for complying with other CIC rules regarding animal conduct, including noise control, removal of animal waste from common areas, leashing, licensing, and current vaccinations. In addition, an individual with an assistance animal will be responsible for physical damages to the dwelling and/or common areas/common elements caused by the assistance animal.

*continued on page 13...*

Types of Assistance Animal	Species of Assistance Animal	Training or Certification Required?	Allowed by ADA/VDA to be in Places of Public Accommodation?	Allowed by FHA/VFHL to be in CICs?
Service Animal	Dog (But in certain circumstances, a miniature horse)	Yes	Yes	Yes
Animals Other Than Service Animals that Do Work, Perform Tasks, and/or Provide Assistance	Common household animals (e.g. dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small domesticated animal)	No	No	Yes
Animals Other Than Service Animals that Provide Therapeutic Emotional Support	Common household animals (e.g. dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small domesticated animal)	No	No	Yes

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## Information CICs Can Seek When Reviewing a Request for a Reasonable Accommodation

CICs are obligated to promptly review and consider a person's request for a reasonable accommodation related to an assistance animal. A CIC is put on notice of a reasonable accommodation request when a person with a disability, his or her family member, or a person acting on behalf of such person requests a change, exception, or adjustment to the CIC's pet or animal rules. A request can be made orally or in writing, and failure to timely respond to a request for an accommodation may be deemed a denial of the request. There is no magic language or required form if the request can reasonably be inferred.



There is no one-size-fits-all approach in reviewing requests for accommodation related to assistance animals as the facts and circumstances are specific to each request and must be determined on a case-by-case basis. CICs, however, are permitted to obtain certain information in order to determine whether a requested assistance animal accommodation is necessary because of a disability. The type and extent of information that a CIC may request depends in part on whether the requester's disability and/or disability-related need for an assistance animal is known or readily apparent.

In January 2020, HUD issued detailed guidance on assessing a request to have an assistance animal as a reasonable accommodation under the FHA, which addresses the types of questions CICs may ask. For instance, if a CIC is trying to determine whether the animal at issue qualifies as a "service animal," the CIC must determine whether the animal is a dog, and if so, whether it is readily apparent that the dog is trained to do work or perform tasks for the benefit of the individual with a disability. If the answers to these two questions are yes, then the CIC is not permitted to ask any additional questions because the animal is considered a service animal, thus requiring the CIC to make a reasonable accommodation. If, however, the answer is no to either question, then such animal is probably not considered a service animal but may instead qualify as another type of assistance animal that may need to be accommodated.

For accommodation requests that pertain to assistance animals other than service animals, CICs are permitted to seek reliable disability-related information. HUD has provided a list of inquiries that CICs may make in order to determine whether the requested accommodation is reasonable and necessary:

- Has the individual requested a reasonable accommodation—that is, asked to get or keep an animal in connection with a physical or mental impairment or disability?
- Does the person have an observable disability or does the CIC already have information giving them reason to believe that the person has a disability?
- Has the person requesting the accommodation provided information that reasonably supports that the person seeking the accommodation has a disability? For this inquiry, it is important to note that CICs are not permitted to ask about the nature or extent of a person's disability or to know the person's diagnosis.
- Has the person requesting the accommodation provided information which reasonably supports that the animal does work, perform tasks, provides assistance, and/or provides therapeutic emotional support with respect to the individual's disability? This inquiry looks to the relationship or connection between the disability and the need for the assistance animal.
- Is the animal commonly kept in households?

As to the documentation that supports an accommodation request, it may come from a health care professional or other third-party who has a professional or therapeutic relationship with the individual with a disability involving the provision of services related to the disability. Since each request for an accommodation is unique, the type of information and documentation that a

CIC may seek depends on the given circumstances. CICs should consult with their legal counsel to determine what information and documentation may be sought.

## When a Request for a Reasonable Accommodation for an Assistance Animal can be Denied

A request for a reasonable accommodation for an assistance animal can be denied in limited circumstances, but before doing so, CICs should consult with legal counsel. Denying an accommodation request for an assistance animal should not be taken lightly and could give rise to a complaint. A CIC may only deny a request for reasonable accommodation if (a) the request was not made by or on behalf of a person with a disability, (b) there is no disability-related need for an accommodation, (c) the request is not reasonable because it would create an undue financial and administrative burden on the CIC or it would fundamentally alter the nature of the CIC's operations, or (d) the assistance animal would pose a direct threat to the health and safety of other individuals or would result in substantial physical damage to the property of others. Lastly, before denying a request for reasonable accommodation, a CIC may be required to engage in an "interactive process" where the CIC and requester have further discussions related to the request. Again, CICs should consult with their legal counsel before denying any request.

## Legal Actions for Discrimination Claims under the Fair Housing Laws

CICs need to be aware that individuals who believe they have been subject to a discriminatory housing practice, such as the denial of a reasonable accommodation, have the following options: (a) file a complaint with the United States Department of Housing and Urban Development ("HUD"); (b) file a complaint with Virginia Real Estate Board or the Fair Housing Board ("Board"); and/or (c) file a lawsuit in federal or state court. Complaints filed with either HUD or the Board will be investigated to determine whether there is cause for the complaint, and if so, issue a charge. Issuance of a charge subsequently leads to a lawsuit. A lawsuit—whether instituted by HUD or the Board, or alternatively, by the individual alleging discrimination—can be filed in federal or state court. The type of relief that may be awarded against a CIC can include temporary or permanent injunctive relief, compensatory and punitive damages, and reasonable attorneys' fees. The costs of responding to an initial investigation, before a lawsuit is filed, coupled with the costs of defending a lawsuit can be staggering. Therefore, CICs should take steps to minimize exposure to fair housing claims.

## Steps to Protect Against Discrimination Claims

CICs can and should take proactive steps to prevent or minimize possible discrimination claims under the fair housing laws.

First, CIC boards and managers should attend educational seminars and/or trainings on fair housing laws on a regular basis to be aware and educated about the subject matter. Whether the boards and/or managers remain the same or change from year to year, CICs benefit when their boards and managers are regularly and continuously informed on fair housing laws. CAI and SEVA-CAI regularly offer fair housing classes and other organizations, including law firms, have been approved by Virginia Common Interest Community Board to conduct fair housing training.

Second, CICs should consult with their legal counsel about matters that fall within the fair housing laws. Legal counsel can provide guidance in responding to reasonable accommodation requests and can also provide necessary fair housing training. Legal counsel should certainly be involved if a CIC face a claim, or threat of a claim, of discrimination from an individual or any third-party, such as the Virginia Real Estate and/or Fair Housing Board, HUD, and/or any local governmental entities.



Third, CICs should adopt policies and procedures that address how CICs will process reasonable accommodation requests. These policies and procedures will help regulate how requests should be submitted, and what information and documentation may be needed. It will also provide uniformity and consistency in the process.

Lastly, CICs should consult with their insurance brokers and/or representatives to determine what, if any, coverage is in place for claims related to fair housing issues. Insurance coverage for these kinds of claims is not typical, so it is important to verify whether coverage is in place, and if not, what additional policies are available to cover such claims.

4829-6327-4696, v. 1



Kathleen W. Panagis is an Of Counsel attorney with Vandeventer Black LLP and a member of the firm's Community Associations law team. With more than a decade of experience, she serves as general counsel to homeowner and condominium associations located in Virginia. Kathleen is an active member of SEVA-CAI and serves as a member of the chapter's Communications Committee.

<sup>1</sup> See 24 C.F.R. § 100.201; Va. Code § 36-96.1:1 (emphasis added).

<sup>2</sup> *Id.*

<sup>3</sup> See Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations Under the Fair Housing Act, Q 3 (May 17, 2004).

<sup>4</sup> See 24 C.F.R. § 100.201; Va. Code § 36-96.1:1.

<sup>5</sup> See 42 U.S.C. § 3604(f)(2); Va. Code § 36-96.3(A)(9); 18 VAC 135-50-200 (C) and (D).

<sup>6</sup> Similarly, the VFHL broadly defines an "assistance animal" into two classes; specifically, "an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability." Va. Code § 36-96.1:1 (emphasis added). The VFHL does not specifically reference a "service animal."

<sup>7</sup> See FHEO-2020-10 of the Department of Housing and Urban Development, Pages 1 and 3 (January 28, 2020).

<sup>8</sup> 28 C.F.R. § 36.104; See also Va. Code § 51.5-40.1 (emphasis added).

<sup>9</sup> See FHEO-2020-10 of the Department of Housing and Urban Development, Page 3 (January 28, 2020); Va. Code § 36-96.1:1.

<sup>10</sup> See FHEO-2020-10 of the Department of Housing and Urban Development, Page 12 (January 28, 2020).

<sup>11</sup> See FHEO-2020-10 of the Department of Housing and Urban Development, Pages 1-15 (January 28, 2020).

<sup>12</sup> See FHEO-2020-10 of the Department of Housing and Urban Development, Pages 6-15 (January 28, 2020).

<sup>13</sup> See Joint Statement of the Department of Housing and Urban Development and the Department of Justice, "Reasonable Accommodations under the Fair Housing Act", Page 7 (May 17, 2004); FHEO-2020-10 of the Department of Housing and Urban Development, Pages 13 (January 28, 2020).

<sup>14</sup> The filing of complaints with the respective governmental bodies or filing of lawsuits are subject to different filing deadlines and/or statute of limitations.

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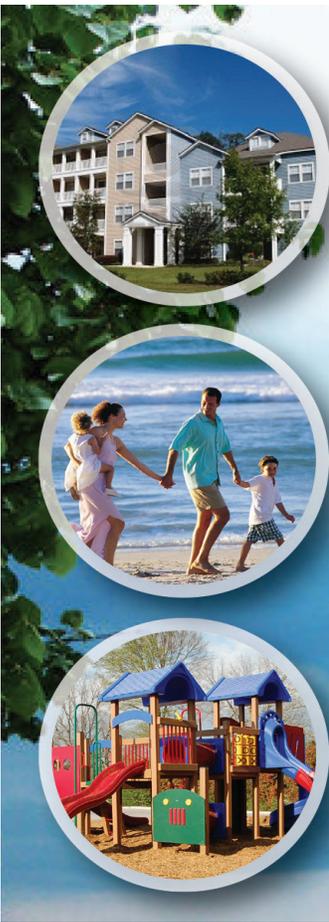
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# What's That *Snake* in the Water?

By **Shannon Junior**, Aquatic Ecologist, *Solitude Lake Management*

Back in the days when I worked for a pond construction company, one of my crew members told me that he needed some help identifying a snake that they had found on the job site. He said it was a water snake, and thought it was a cottonmouth. I asked if he had taken pictures of it, but instead he presented me a burlap bag with the snake inside. Its head was smashed, and its body had been neatly cut into several pieces with the blade of a shovel. As an ecologist and lover of wildlife, the site of the demolished snake left me heartbroken and speechless. It was a large, beautiful and HARMLESS northern watersnake. All I could think of to say was, "That is NOT the way to identify a snake!"

This case of mistaken identity is not unusual. There are some very vague similarities in coloration and pattern between northern watersnakes (*Nerodia sipedon*) and cottonmouths (*Agkistrodon piscivorus*), and they also somewhat resemble copperheads (*Agkistrodon contortrix*). However, when seen side-by-side, the snakes do not actually look that similar. And unlike

cottonmouths and copperheads, northern watersnakes are non-venomous and harmless to humans if left alone. Unfortunately, though, misidentification results in more watersnakes being killed each year than venomous snakes.

Unless you live in the southeastern corner of Virginia near the Dismal Swamp or farther south, then it is unlikely that you will see a cottonmouth in the wild. They are not found in other parts of Virginia or anywhere farther north. These venomous semi-aquatic snakes are also known as "water moccasins". When threatened or harassed, they will coil up and open their mouths wide to expose their fangs and the white interior of their mouths, which is why they were given the name "cottonmouth" - although hopefully you will not have the opportunity to witness this phenomenon up close! Again, though, they only exhibit this behavior when approached, and would much prefer to use their venom for hunting prey than for defending themselves against humans.



Cottonmouth

The other unfortunate look-alike for the northern watersnake is the copperhead. However, copperheads are terrestrial snakes, and prefer upland habitats such as rocky, forested areas to aquatic habitats. Their range is more widespread than that of the cottonmouth, and they are found throughout most of the eastern U.S. as far north as Massachusetts. Copperheads are responsible for many of the snakebites to humans reported each year, but they are rarely fatal. Most bites occur when people accidentally step on or touch the snakes because they are so well camouflaged with their surroundings. When disturbed, copperheads emit a musk that smells like cucumbers.

Northern watersnakes are not venomous or aggressive. They are beautiful! They are brownish-gray snakes with broad blotches and crossbands on their backs with varying degrees of red, yellow, and white. The juveniles are brightly colored, but the colors become more subdued as the snakes age. They are frequently seen basking on rocks or stumps near lakes, rivers and streams. They are active both during the day and at night, and eat small fish, amphibians, crustaceans, and even small mammals. They have been known to “herd” tadpoles with their body and eat them. They will flee from confrontation if given the chance, but may bite repeatedly if cornered. The bite will bleed a lot because of the anticoagulant saliva, but is not poisonous. Again, though, even a cute little chipmunk will bite a human to defend itself!

Watersnakes can be easily distinguished from cottonmouths and copperheads by the shape of their heads. The poisonous snakes have triangular shaped heads that are much wider than their “necks”, whereas the watersnake has a round head that’s narrower than its body. Cottonmouths and copperheads are pit vipers, and have discernable pits on top of their noses – though you might not want to get close enough to observe that characteristic! The venomous snakes also have yellow eyes with vertical slits for pupils, similar to cats’ eyes. Watersnakes have round eyes with round pupils. And when seen in the water, a cottonmouth swims with most of its back protruding from the water, while the watersnake swims with only its head visible.

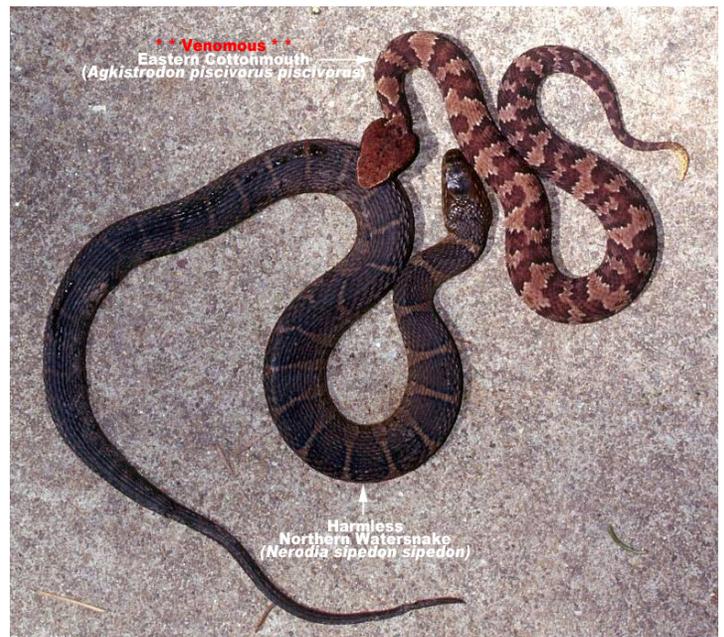


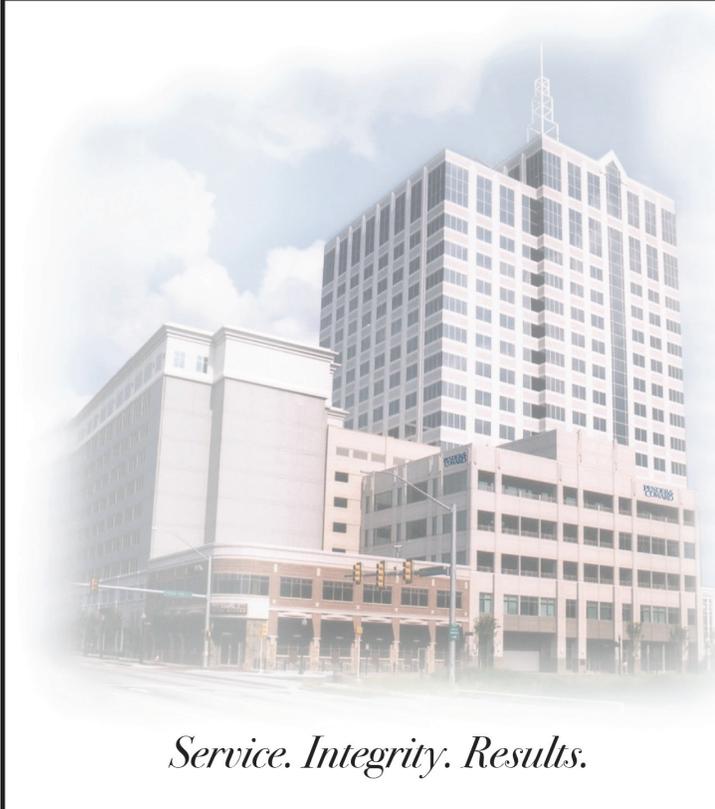
Copperhead

If you are lucky enough to see a snake in or near the water, it is most likely a northern watersnake. The best thing to do is to quietly observe it from a distance if you’re interested, or walk the other way if you’re scared. It will not chase you or strike at you unless it feels threatened. And always remember, the best way to learn about wildlife is to arm yourself with knowledge, not the tip of a shovel!



Shannon Junior is a senior business development consultant and aquatic ecologist with Solitude Lake Management.





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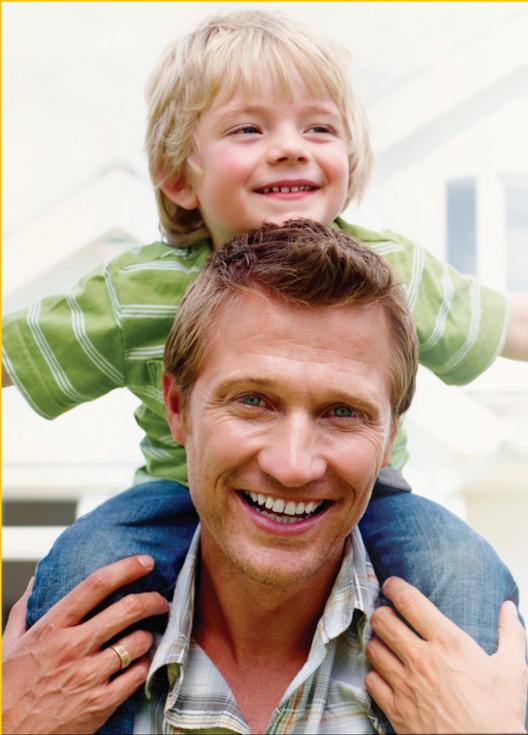
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# The American Dream is in Reach: **The FHA Condominium Approval Process and Your Condominium Association**

By **Jeffrey A. Hunn, Esq.**, *Pender & Coward, P.C.*

I am constantly being asked by my condominium association clients to assist them with gaining Fair Housing Administration (FHA) approval. The clients, unfortunately, believe the process is difficult, takes months and is expensive. They believe there are provisions in their governing documents that prevent them from becoming eligible and think, "why should we waste our time and money?" There is often hesitation to

begin the FHA approval process because the law changes frequently. Many times, clients do not understand the benefits of FHA approval. In order to address these misconceptions and answer your questions, I thought I would take the time to provide a general overview of the FHA, discuss the benefits of FHA approval, outline the approval process, and summarize the current FHA eligibility requirements.

## What is the FHA?

Before turning to the approval process and the benefits of FHA approval, I think it is helpful for owners, board members and managers to understand the FHA's role in the housing market. The Federal Housing Administration (FHA) is a governmental agency that is a subdivision of the US Department of Housing and Urban Development (HUD). The FHA provides mortgage insurance on loans made by FHA-approved lenders throughout the United States. It is one of the largest insurers of mortgages in the world, insuring more than 46 million mortgages since its inception in 1934 according to their website.

FHA mortgage insurance provides banks with protection against losses if a Unit owner defaults on their mortgage. The banks, therefore, bear less risk because FHA will pay a claim to the bank for the unpaid principal balance of any defaulted mortgage. In order to qualify for insurance, the loans provided by the bank must meet certain requirements established by the FHA. For many borrowers seeking to purchase property, FHA backed loans are cheaper, have lower down payment requirements, and require lower minimum credit scores. In addition, FHA mortgage rates are typically lower than conventional, non-government, loans. All of this makes it easier to purchase a home, meaning more opportunity for people to buy into a condominium and more opportunity for your owners to sell when they are ready.

## Why is FHA Approval Important?

FHA approval is generally advantageous to existing owners. Each condominium association, however, is different and each association should evaluate whether seeking FHA approval would be beneficial to the members of the association. The most often cited advantages of obtaining FHA approval are (1) it creates a larger pool of prospective buyers, (2) it demonstrates some stability because the association's financials and restrictions have been vetted and approved by a Federal agency, (3) it makes it easier for current Unit owners to market and sell their Unit, (4) it allows current Unit owners to re-finance or enter into a reverse mortgage at current, historic low rates, (5) and it helps maintain and can even increase property values.

## The Application Process?

While the association may be able work with a bank lending money to a potential buyer to obtain FHA approval, a process known as Direct Endorsement Lender Review and Approval Process (DELRAP), the most common method is for the association to directly apply to HUD for approval. This is known as the HUD Review and Approval Process (HRAP).

The application process can be tricky and time consuming. Due to this, most associations choose to hire

an experienced attorney to evaluate their eligibility for approval and assist with navigating through the process. Generally, the FHA approval process begins with a short questionnaire for the board or manager to fill out. The manager will be asked to provide certain financial and insurance information, including current balance sheets, delinquency reports and insurance policies. The attorney assisting your association will then collect the required documentation, analyze the information provided and compare the information with the association's Governing Documents to make sure it all meets the FHA guidelines and eligibility requirements. Finally, if no eligibility issues are spotted, the attorney will sign and submit the application to HUD for approval.

If the attorney finds eligibility issues that may cause the association to be ineligible, the attorney will work with the association to fix them. This could range from getting an amendment passed to assisting with collection efforts to reduce the delinquencies.

Not all condominium associations will qualify for FHA approval. Most eligibility issues, however, can be fixed. The most common issues I see that threaten eligibility are:

- The association strictly forbids leasing.
- The association's delinquency rate is too high.
- The association requires the Unit to be owner-occupied for at least one (1) year before it can be leased.
- The association does not have enough insurance coverage.
- The association is not funding a reserve account appropriately.

The FHA approval process generally takes 3-6 weeks. It can take longer depending upon how quickly the required documentation is provided to the submitting attorney and whether HUD finds eligibility issues, such as those described above, and how long it takes to fix those eligibility issues. Once an association is approved, the association will need to go through a recertification process every three (3) years to ensure continued compliance with the ever-changing FHA guidelines.

## What are the Eligibility Requirements?

In order to be eligible for FHA approval, condominium associations must meet several strict eligibility guidelines which HUD publishes. These guidelines change from time to time. The primary eligibility requirements are as follows:

1. Governing Documents – No provision of the association's governing documents may violate FHA guidelines or Federal laws (i.e. certain restrictions on the sale or leasing of a Unit).

2. Owner-Occupancy v. Rentals– No more than 50% of units can be investor-owned/ rentals (Exception: This requirement can be reduced to 35% if the association can prove three years of stable financial records, low delinquency rates and a current reserve study).

3. Investors – For associations with more than 20 Units, no more than 10% of the Units may be owned by any single investor. For associations with less than 20 Units, no single entity or person may own more than one Unit.

4. Reserve Funding – Generally, the association’s submitted financial records must show at least 10% of the budgeted income is allocated to a reserve account (Exception: If this requirement is not met, the association may be able to submit a recent reserve study to prove the adequacy of the association’s reserve account).

5. Insurance – The association must show a master insurance policy covering 100% of replacement cost for the condominium, a general liability policy covering all common elements, a fidelity bond (i.e. “employee dishonesty” policy) of at least three (3) months aggregate assessments of all units plus the amount in reserves, and flood insurance if located within the 100-year floodplain.

6. Delinquencies – No more than 15% of the Units can be more than 60 days past-due.

7. Commercial Property – No more than 50% of the property can be used for commercial purposes.

8. Pending or Recent Litigation – May prevent eligibility and will require explanation.

9. Pending or Recent Special Assessments – May prevent eligibility and will require explanation.

The above list is not exhaustive and is intended as a summary of the major issues involved with gaining FHA approval. The guidelines are extensive and vary depending on the age, size and composition of the condominium association.

## What Documentation Needs to be Submitted to Gain Approval?

HUD requires submission of several documents for FHA approval. Your attorney will work with you to gather the necessary paperwork. At a minimum, you will be asked to submit the Articles of Incorporation, recorded Declaration and signed Bylaws. You will be asked to provide financial documentation, including a recent

(within 60 days) balance sheet and income statement, a current budget and the prior year end income statement. Be prepared to submit the Declarations page for each of the association’s insurance policies as well as a copy of the association signed management contract. Also, be prepared to explain budget shortfalls or outstanding loans.

## Conclusion

The following website contains a list of all condominiums which have gained FHA certification and approval and the date upon which the approval will expire: <https://entp.hud.gov/idapp/html/condlook.cfm>. From time to time, HUD publishes new guidelines that change the FHA approval process, so be sure to contact your association’s attorney if you have specific questions relating to the potential eligibility of your condominium association.



Jeff Hunn is a shareholder with the law firm of Pender & Coward, P.C., and is a member of the Community Association Practice Group. He is an active member of SEVA-CAI, and currently serves on the Board of Directors.

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# Dream Catchers:

## *How to Lead Your Association to the Gold*

By **Thomas L. Willis, PCAM®**, Association Bridge, LLC

Imagine a community association where members respect and appreciate their boards, committee members, and management team. Meetings are productive and upbeat. Different opinions are welcomed and lead to interesting discussions and innovative solutions. The board has a plan and gets things done. Volunteers are not hard to find, and the leaders celebrate passing the baton to their successors. Community members love where they live.

I see some of you smirking out there, thinking to yourselves, "That guy's living in a dream world!" This is no dream. True, most community association leaders are so involved in day-to-day business that they cannot imagine elevating to more rewarding level. Yet highly-functioning communities around the country have reaped the benefits of doing so.

How do they do it? How do they consistently promote good organizational habits and a commitment to continuous improvement?

### Learning to Lead

It starts with the understanding and application of sound leadership principles and practices. Effective leadership is an inside job first, an expression of who you are in the service of others, hence the concept of the servant leader. It is recognizing that you serve a greater good. When you do, you realize why the great thought leader Warren Bennis called leadership "the art of being more fully human."

One of the best guideposts I've come across is from Kouzes and Posner's seminal work, *The Leadership*

Challenge, which identifies characteristics of leaders performing at their best. The resultant five practices provide a great checklist for community volunteers:

- Clarify values. Affirm the shared values of the organization and teach others to model them.
- Inspire a shared vision. Imagine the possibilities, find a common purpose, and animate the vision by appealing to common ideals.
- Challenge the process. Search for opportunities, revisit old assumptions, experiment, generate small wins, and learn from experience.
- Enable others to act. Foster collaboration by creating a climate of trust, facilitate relationships, and strengthen others by developing competence and confidence.
- Encourage the heart. Recognize contributions, expect the best from others, personalize recognition, and celebrate the value and victories, creating a spirit of community.

Think about leaders you've admired. I suspect they employed these five practices. All apply to community association leadership. The question is, how can you do it?

## Culture – The Missing Link

The culture of an organization either creates the space for sustainable, defined success or makes it difficult, if not impossible. A healthy culture allows the organization to tap into the knowledge, talents, experience, energy, and intellectual capital of participants. It does not permit ego, politics, or dysfunction to get in the way. And yet...community association boards almost never talk about culture.

In this context, culture can be defined as the environment that establishes norms for behavior for the people in the organization. It involves the connection between individuals' goals and values and those of the group. Culture is embodied in author Seth Godin's statement: "People like us do things like that."

Organizational culture provides the context in which the stakeholders understand their roles and can concentrate on doing their best. Healthy cultures in community associations put boards in a position to establish desired results and provide the necessary resources to achieve them. Focusing on those results delivers rich payoffs. Building a healthy culture yields exponentially compounded interest in terms of time, energy, progress, and community spirit.



## Three Cultures

Organizational culture tends to fall into one of three general categories:

- **Intentional Culture.** Values, goals, and norms have been identified, codified in some form, and provide the basis for principled action. People in the organization are clear on "The Why."
- **Unintentional Culture.** Values, goals and norms are left to chance. Defining them depends on who the influential people are in an organization at a particular time. Frequently, decisions are made and actions taken on an ad hoc basis. Sometimes leaders focus on rules and written procedures without explaining why they matter. Other times, there is no focus at all. Everybody works too hard reinventing the wheel or making it up as they go. If such a community is fortunate, things will go well riding on the backs of a few good people.
- **Actual Culture.** Values, norms and goals have been identified. There may be mission, values, and vision statements with lofty aspirations printed on glossy marketing materials and plaques on walls. Yet, leaders and members of the organization violate those ideals on a regular basis without correction. The inherent hypocrisy of the organization destroys morale and trust.

Most organizations fall into the unintentional category. Their leaders may have no concept of culture or fail to recognize the benefits of the time investment necessary to build a successful one. They cannot see that the hard work up front will significantly decrease their time and effort in the long run. They are so caught up in the day-to-day operation that they miss the bigger picture.

*continued on page 26...*

## Let's Get Intentional

Organizations create and perpetuate effective and sustainable culture in which principled action is fostered. They tend to employ some version of the following hierarchy:



Why do many community associations tend to have an unintentional culture? First, boards can be mired in tactics, too busy putting out fires and being stuck in the weeds to elevate their perspective.

Second, exclusive devotion to the standard board meeting model can cause an unintended consequence. Leaders and managers are trained to follow the legal requirements for board meetings. They correctly do the association's business in accordance with open meeting requirements and the standard meeting agenda. Well planned and executed board meetings are highly effective in handling the day-to-day business of the association. However, regular board meetings are horribly ill-suited to address bigger picture issues, complicated projects, and strategic planning. These discussions will never fit into a standard board meeting agenda in the best of times. Change it up by scheduling some town hall or special meetings to listen to what members have to say, get ideas flowing, and deal with big picture issues.

## Beware Culture Killers

There are some insidious traps that will destroy good habits and crush the culture of continuous growth.

Beware ego and fear of looking stupid or making a mistake. The truth is, if you try new things and work

towards progress, mistakes will be made. Admitting mistakes and allowing for some vulnerability will earn you more respect than pretending to be perfect. Humility is a huge asset for effective leaders. It builds trust.

Management consultant and author Patrick Lencioni's comprehensive work with teams yields a useful model that is a guidepost for analysis. According to Lencioni, effectiveness starts with trust. Trust allows for healthy conflict, which in turn fosters commitment. Commitment sets the stage for acceptance of accountability. These four elements naturally lead to results. Lencioni also offers a converse approach that can be used as a scorecard. Check out the "The Five Dysfunctions of a Team". Hopefully you won't experience too many "uh oh" moments!

Finally, pay attention to how leaders act when mistakes are made. If the first question asked is "Who is responsible?" something's wrong. Organizations with healthy cultures react with the following questions, in this order:

- **What?** Determine exactly what happened. Make no assumptions.
- **Why?** Was this a performance issue, a systems issue, or a combination?
- **How?** What factors contributed to the issue? And only then...
- **Who?** Now you can address the matter, take the appropriate action and help people to grow and learn.





## That All Sounds Great, But...

The concepts all make sense, but where can you start? What practical steps can volunteer leaders take to create and promote a culture of good habits and sustainable progress?

**1. Adopt the three word mantra.** One of the reasons I stuck with my main professional mentor for over 30 years was because he consistently stressed three powerful words. Best idea wins. No politics. No ego. A great idea is a great idea, no matter who came up with it. Be prepared to hear it. Any board that adopts that mantra encourages participation and collaboration.

**2. Start with shared values.** Begin the process of identifying the shared values of the community and board. They can be accomplished with a series of work sessions. An outside facilitator can help. You can also back into it with another process I will describe below. Listening to members is crucial, whether it be at board and annual meetings, by soliciting input through town hall meetings or surveys. Quantifying shared values may seem daunting, but it doesn't have to be. A few key questions can get the ball rolling. Borrowing from the affirmative inquiry method, you could try these:

- What were the factors that drew you to this community?
- What do you enjoy most about living here?
- When things were at their best, what did it look like?
- What is the most valuable thing about living here?
- What was the best thing the board ever did?
- How do you describe the association to your friends or family?

Look for common themes. Find what resonates. Start writing. Any resultant statement of values, vision, and/or mission that will provide context and a guidepost for the decisions and actions of the organization would be beneficial. It doesn't have to be perfect. You will periodically adjust as needed anyway. Baby steps are OK.

### 3. Hold an annual board orientation/tune-up.

Consider an annual training session. The ideal time for such a session is soon after each annual meeting. The session can reinforce industry-specific and leadership fundamentals and help new board members get up to speed quickly. The management team should attend. Boards have found these sessions helped their group gel quicker, promoted principle-based discussions and decisions, and increased efficiencies especially early in the board year. Some boards include committee members.

### 4. Schedule annual planning sessions.

Schedule an annual brainstorming session with key team members to set goals for each upcoming year. Reverse-engineer the goals to identify the steps needed to achieve those goals. Create a realistic timeline of events to get them done. Priorities will be set and a trackable plan established. Boards that follow this discipline are focused, productive and forward-thinking. They also establish expectations for themselves, their support staff, and the community. Some boards find that the process also helped them identify or clarify their values, vision or mission. It makes sense – if you listen carefully to what people want to do, you'll know what's most important to them.

## Make it Happen!

Great leadership and a healthy organizational culture are infectious. They create success cycles. It's not easy to get it going. In *Good to Great*, author Jim Collins likens progress to a massive metal flywheel. It takes time and energy to get the wheel turning. But once it starts and inertia kicks in, it gets easier and you reap the rewards of your hard work. Elevate and go for the gold. Don't give up. It will pay off.



Tom is the owner of Association Bridge, LLC, dedicated to creating spaces where community association leaders and the professionals who serve them can successfully navigate the challenges they face, reach the goals they choose, find satisfaction and joy in their service, and make raving fans of association members.

# Aesthetics as an Economic Issue



## SUMMARY

CAI opposes any and all attempts at the federal, state and local levels to enact laws or regulations that ignore or negate the economic importance of aesthetic controls.

## POLICY

The overall appearance of any common interest community has an economic impact on property values. When communities look old, poorly maintained or without a unified scheme in architecture, color or landscaping, property values of individual owners' properties as well as the whole community suffer. When aesthetics of any one development look clean, well maintained, properly proportioned and part of an overall design or compatible color scheme, owner expectations are met and property values are sustained and improved. In fact, independent studies have shown that real estate values generally appreciate in a common interest community when compared with properties not located within such a community.

In order to maintain an attractive and valuable "curbside appeal," common interest communities must control aesthetic interests of the development. Aesthetic control extends to the design and maintenance of all improvements existing on the footprint of the development, including, but not limited to: siding, fences, landscaping, lighting and even buildings housing units as well as lots, where applicable, all of which are visible throughout the community.

Governing documents obligate the association to "maintain" the property. Sometimes governing documents also expressly provide aesthetic controls within the declaration, restricting fence styles or paint color choices. Where governing documents are generalized or even silent on aesthetics, many communities craft policy resolutions to address details and procedures relating to architecture, landscaping and other aesthetic interests. When communities fail to construct or consistently enforce aesthetic policy, the result is usually property that lacks visual coherence due to poorly contemplated and executed aesthetic schemes. The results can be devastating for owner lifestyle and property value.

## RECOMMENDATION

CAI strongly supports community-crafted aesthetic controls, in accordance with governing documents or supplemental thereto, and opposes any and all attempts by federal, state and local government to interfere, ignore or negate the contractual obligation between associations and its members permitting and requiring the association to maintain aesthetics that meet lifestyle expectations of the collective ownership, match a standard of cleanliness and maintenance and are part of a larger, unified aesthetic scheme. Architectural or design review committees should include professionals or seek advice from CAI business partners on a regular basis.

Adopted by the Board of Trustees, October 25, 1997

Amended by the Government and Public Affairs Committee on March 25, 2011

Adopted by the Board of Trustees, May 4, 2011

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# How to Protect Your Association

## *Workers Compensation, Certificates of Insurance, Additional Insured Endorsements and Hold Harmless Agreements*

By **Connie E. Phillips, CIC, EBP, CIRMS**, *Connie Phillips Insurance Financial*

Every association should carry a workers' compensation policy – whether the association has employees or not. If your association issues 1099's to contractors, then you can be held liable for injuries or liability from an uninsured contractor.

While the general liability policy does provide coverage for "bodily injury", it EXCLUDES "bodily injury to an employee" or volunteer. A serious injury to a volunteer of the association or employee of a contractor (that the labor commission rules is an "employee" of the association) would be excluded by your general liability carrier. The workers' compensation policy should also include a Voluntary Compensation (VC) endorsement. This endorsement provides coverage for the protection of the volunteer.

### **The policy will offer protection for the following exposures:**

- 1) An employee of an uninsured contractor is injured while on association property and the contractor has not provided proper coverage. The association may be required by the local labor/industrial authorities to step in as the "employer" as it relates to benefits owed to that injured employee.
- 2) A volunteer working on behalf of the association is injured during the course of their official duties. The association should and ultimately may be required to treat that injury as "work-related" thereby requiring benefits owed under the labor code. The voluntary compensation coverage treats injuries to an injured volunteer (working in

an official capacity), as a work-related injury and provides first dollar coverage for that injury - not excess of personal medical insurance carried by the volunteer.

Before hiring a contractor for your association, be sure to ask for proof of insurance. You should attempt to weed out less responsible contractors who may put their workers and customers at risk by not meeting minimum standards of coverage for injuries. Not having the proper insurance from the contractor, could involve your association in a lawsuit resulting from a general liability claim or a worker's injury claim.

The courts are holding the insurance carriers responsible for any injuries on your property where the contractor has no Workers Compensation or General Liability insurance in force. Therefore, if your insurance carrier has to pay the claim, they have the right to charge you a premium under the policy. When the final audit is done, the insurance carrier will charge you a premium for any uninsured contractors. The only way to avoid this premium charge is to obtain a certificate of insurance for both workers compensation and general liability.

### Require the contractor to provide you with a Certificate of Insurance providing:

- 1) General liability insurance – recommended minimum limit of \$1,000,000
- 2) Additional insured endorsement naming the association and management company as additional insured. Be sure this is included on the certificate
- 3) Workers compensation insurance

It is also recommended that you check:

- 4) Verification of any required contractor's license
- 5) Verification of contractors' fidelity bond for protection against theft of items
- 6) Have a signed contract with all contractors that will include a hold harmless clause that protects and indemnifies the association and management company and reflects an additional insured endorsement. For example purposes only, a short sample of a "hold harmless agreement" is shown below. Your association should consult with legal counsel to discuss and create a "hold harmless agreement" specific for your association and the contract at issue.
- 7) These requirements should be part of your established business practices to protect the association and maintained for a minimum of 3 years following the job completion.

### FOR EXAMPLE PURPOSES ONLY: Sample Wording for Indemnification, Hold Harmless and Insurance Agreement

*To the fullest extent permitted by law, \_\_\_\_\_, ("Contractor"), agrees at its own cost to defend, indemnify, and hold harmless \_\_\_\_\_, ("Association"), its officers, directors, shareholders, agents, representatives, managers, employees, and affiliates from and against any and all claims, suits, liens, judgements, damages, losses, and expenses including reasonable attorney fees and legal expenses and costs arising in whole or in part and in any manner from the acts, omissions, breach, or default of Contractor, in connection with the performance of any work by Contractor, its officers, directors, agents, employees and subcontractors. This agreement is continuous until terminated by either party with written notice.*

Check your directors and officers (D&O) liability application as well. Most applications will require the association to maintain proper certificates of insurance reflecting the additional insured endorsement and have a hold harmless contract signed in favor of the association.

The certificate of insurance (COI) only provides the basics about the contractors' insurance coverage, but offers reassurance to the association, that the contractor is insured on the date the certificate is issued. As an additional insured, check to see if you will be notified in the event the policy is cancelled.

Take these necessary steps to keep your Associations financial future safe.



Connie is President of Connie Phillips Insurance. Connie has a Certified Insurance Counselor (CIC) and a Community Insurance and Risk Management Specialist (CIRMS). She is also a Community Associations Institute Educated Business Partner (EBP). Connie can be reached at 757-761-7757, or [cpi@insurance-financial.net](mailto:cpi@insurance-financial.net)

**This article is Part 4 of a 4 Part series. You can view the previous installments at [www.sevacai.org/currents-newsmagazine](http://www.sevacai.org/currents-newsmagazine)**



# Loan or Special Assessment?

By **Don Plank, PCAM®**, National Cooperative Bank

In a perfect world, the answer to the question posed in the title would be a definite – NEITHER! Unfortunately, we don't live in a perfect world and many communities find themselves in a predicament where simply raising fees won't get them sufficient reserve funds to pay for various reserve or capital improvement projects.

The primary source of reserve related projects should be the association's reserve fund. It is a cost effective and fair option as the reserve fund can be built up over a series of many years by residents who have paid their fair share while living in the community. Regularly updating your study is key and everyone should pay attention if the budgeted reserve line item differs dramatically from what has been recommended. Ask why and don't fool yourself. The money won't magically appear and underfunding will eventually lead to the question of "Loan or Special Assessment."

## Special Assessments

For years special assessments were seen as the answer to underfunding of reserves.

### *There are some advantages to using special assessments, including:*

- Quick and often low cost to the association.
- Can raise funds without raising underlying assessments.
- Permits a project to be done all at once (at least if the special assessment raises sufficient funds to cover the full cost) instead of spreading out over a series of years.

### *Then there are the disadvantages, including:*

- Immediate equity hit to homeowners, meaning they must come up with hard cash, even if they decide to sell and move out. Once implemented, the owner at the time the special assessment was passed is typically responsible to pay that assessment.
- Owners may not have the cash available to pay a special assessment.

- History of frequent special assessments may have a negative impact on the community's reputation which can impact resale values.
- Often very unfair. Special assessments penalize the unlucky owners who happen to own when the special assessment is put in place, thus limiting the fairness factor addressed by adequately funding reserves. (Just because the roof wasn't replaced while you lived in a community doesn't mean you didn't benefit from having a roof.)
- Often require a vote by the community. This can impact how quickly a special assessment happens.

## Loans

Loans to community associations are becoming a standard tool in a board's toolbox of ways to raise funds. Part of the reason loans are becoming more frequent is simply the scale of projects many associations, especially condominium associations, are facing. Many condo buildings built in the 70's and 80's are facing large infrastructure projects such as pipe replacement and balcony refurbishment. Costs to do such a project all at once are often outside the scope of available reserve funds. Loans can offer a bridge across this infrequent shortfall in funding, especially when a special assessment of the project would easily be in the thousands, and often tens of thousands of dollars per unit.

### *Advantages of a loan include:*

- Equity hit to owners is done over a series of years instead of in one swoop as is often done with a special assessment. The most common loan terms for large projects range from 10 – 15 years, thus permitting costs to be absorbed into ongoing assessments over a much longer period. In other words, owners get to hang onto their money for longer before paying the association.
- Obtaining a loan at the association level takes the burden off owners from having to find their own financing options through home equity loans, etc.
- Helps address the fairness issue since payback is made over a series of years. Do take into consideration how loan payback is structured. A line item in the general budget versus a loan special assessment can have implications for when a sale happens.
- A loan, like a special assessment, allows all the necessary funds to be raised at once instead of spreading a larger project over a series of years. Pricing is often significantly better if a contractor does not have to do multiple mobilizations.

### *A loan also has its disadvantages compared to a special assessment:*

- Higher cost – closing and interest costs.
- More time commitment from board members and/or management.

- Like a special assessment, an owner vote is frequently needed. However, many owners do not understand loans at the association level so you will need to hold townhall meetings, etc., to explain the process and why it may be advantageous over a special assessment. This takes time.
- Reporting requirements. While fairly minimal, a loan does come with some strings other than simply making payments. Strings includes such things as insurance requirements, annual financial reporting, minimal reserve requirements, etc.

## Summary

As you can see, there is no one size fits all answer when it comes to which option – loan or special assessment, may work best for your community. Quite honestly, the best answer is, "It depends." If the amount of money you need to raise can easily be paid in cash by the majority of your owners, consider a special assessment. It's not worth the time and effort to go through the loan process. On the other hand, if the amount of the special assessment will cause many owners to either request a special payment plan or require them to shop for their own financing options, do the responsible thing as a board and explore possible loan options. A board/management know their community best. There is no one size fits all. Consider your options, pick the brain of a trusted banker and then consider what makes sense. Finally, consider updating your reserve study and funding appropriately. Your best option of all is to set up your community so neither a loan or special assessment is needed.



Don Plank holds a PCAM designation from CAI and managed community associations for 9 years before assuming his current position as Vice President of Association Banking Services at National Cooperative Bank.

# upcoming events

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**Making the Most of  
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“

There are some days when you need a hand, there are other days when we are called to lend a hand. That is how it has to be, and that is what we do for one another. - Joseph R. Biden

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