

Association of Condominium,
Townhouse, and
Homeowners Associations



11 E. Adams, Ste. 1107 • Chicago, IL 60603 • 312-987-1906 • actha@actha.org • www.actha.org

February 2016

Staff Announcement	2
Legislative Update	3
Private Street Dedication continued	4
Question of the Month continued	5
Spring Conference Program	6
Meeting/Election Announcement	6
Spring Conference Registration	7
Question of the Month	8

2016 PLATINUM SPONSORS

*ACM Community Management
Community Advantage
Dickler Kahn Slowikowski & Zavell
Fullett Rosenlund Anderson PC
Hollinger Insurance Services
Hometown Painters
Kovitz Shifrin Nesbit
M & J Asphalt & Paving
MARCUM
Penland and Hartwell
Pro-Home 1
ServPro of South Chicago*

**ACTHA's
SPRING CONFERENCE
Sat., April 16**

**Details on pages
6 & 7**

DEDICATION OF PRIVATE STREETS: REALITY OR IMPOSSIBLE DREAM

By Jim Slowikowski of Dickler Kahn Slowikowski & Zavell

Condominiums and HOAs often have what may be called streets which are a part of the association. The streets may have a standard street configuration. They may have a non-standard configuration. These streets are private because they do not conform with municipal standards that existed at the time they were built or because the agreement to maintain them by the association was a trade-off with the developer for some other features such as higher density. The streets may not actually be streets as that term is understood by a municipality. More often they are hybrids. They may be narrower than municipally approved streets. They may not have curbs or gutters. They may not have the same composition as an approved street, either in terms of subsurface materials and specifications or surface materials and specifications. They may be driveways, aprons, or access roads. They may include parking portions.

Dedication. Generally the rationale as to why a street was not dedicated is unimportant in any attempt to secure dedication. That general rule may not apply if dedication was initially contemplated by the municipality or if the municipality takes action either initially or at some point in time that would constitute an implied dedication.

There are at least two types of street dedication. One is an implied dedication. The second is a formal dedication.

Implied Dedication. An implied dedication occurs when a municipality voluntarily undertakes obligations normally associated with public streets. If a municipality repairs a

Continued on page 4



S&D ENTERPRISES, INC.

Over 50,000 Roofs Installed Since 1963

Specializing in Multi-Family Projects

Our Experience
& Technical
Know-How
Gets the Job Done
Right the First Time!

Specialized in Roofing Services & Projects for:

Tear-offs • Shingles • Soffit & Fascia
Flat Roofs • Gutters - Siding • Repairs



OWENS CORNING
Preferred Roofing Contractor



COMPLETE ROOFING SERVICE • BONDED AND INSURED
A State of Illinois Unlimited Roofing Contractor

» **Call Sam or Stu Martel for a FREE Estimate**

630-279-6600 • www.sdroofing.com

STAFF CHANGE

ACTHA is sorry to see our Administrator Yvonne Thompson retire, effective Feb. 26. She has been with ACTHA since 1995 and to say she will be missed is putting it mildly! As our secretary, Yvonne handles a variety of tasks including invoicing and maintenance of our member database.

Future inquiries should be addressed to:
admin@actha.org



Fullett Rosenlund Anderson PC
Attorneys at Law

Dedicated to providing the highest caliber of legal services to
Illinois community associations.

Collection of Delinquent Assessments
Declaration, Bylaw and Rule Amendments
Legal Opinions
Covenant and Rule Enforcement

Contract Review and Negotiation
Developer Turnover
State and Federal Court Litigation
Defense of Fair Housing Claims

430-440 Telser Road, Lake Zurich, IL 60047
150 North Michigan Avenue, Suite 2800, Chicago, IL 60601
Phone: 847-259-5100 www.frapc.com

Board of Directors

Officers

President: Beth Lloyd **Vice President:** Joe Fong **Treasurer:** Bob LaMontagne **Secretary:** Jacqueline Fanter

Directors

Mike Matthews Nancy Moreno Diane Pagoulatos Myrna Santiago-Martinez Ron Sirotzki

Executive Director: Gael Mennecke

Lobbyist: John Carr, Social Engineering Associates, Inc.

Legal Counsel: Rob Kogen of Kovitz Shifrin Nesbit and Charles VanderVennet in private practice

Accountant: John Kopezyk of Kopezyk and Scott

Insurance Consultant: Karyl Foray of Rosenthal Bros.

Note: Materials in this publication may not be reproduced without the written permission of ACTHA. The statements and opinions in this publication are those of individual authors and ACTHA assumes no responsibility for their accuracy. ACTHA is not engaged in rendering legal, accounting or other expert assistance. If required, the services of a competent professional should be sought. Acceptance of advertising in the ACTHA newsletter does not constitute an endorsement by ACTHA or its officers of the advertised products or services. The publisher reserves the right to reject any advertising.

LEGISLATIVE UPDATE

At press time, three bills were introduced by Rep. Scott Drury (D– Highland Park). The bills are in response to the “Spanish Court” case from two years ago. Below is a synopsis of each. To view the full text of a bill go to: www.ilga.gov and type the bill number in the left-side box.

H.B. 4489 (Drury) Amends the Condominium Property Act. Contains a statement of public policy. Provides that a unit owner may bring a legal action against the association or its board of managers to enforce individual or common interest community rights without being required to sue other homeowners or otherwise name them as defendants. Provides that any costs associated with providing notice to unit owners shall be paid by the association and shall not be assessed against the unit owner bringing the action. Additional provisions.

H.B. 4490 (Drury) Amends the Condominium Property Act. Contains a statement of public policy. Provides that a unit owner may bring a legal action against the association or its board of managers to enforce individual or common interest community rights without being required to sue other homeowners or otherwise name them as defendants. Provides that any costs associated with providing notice to unit owners shall be paid by the association and shall not be assessed against the unit owner bringing the action.

H.B. 4491 (Drury) Amends the Condominium Property Act. Contains a statement of public policy. Provides that a unit owner may bring a legal action against the association or its board of managers to enforce individual or common interest community rights without being required to sue other homeowners or otherwise name them as defendants. Provides that any costs associated with providing notice to unit owners shall be paid by the association and shall not be assessed against the unit owner bringing the action. Other provisions.

H. B. 4597 (Martwick) Amends the Common Interest Community Association Act. This is a “shell” bill introduced for possible use later on.

H. B. 4598 (Martwick) Amends the Illinois Condo Property Act. This is a “shell” bill introduced for possible use later on.

In addition, there have been several recent court decisions affecting associations. These are:

Pembroke Condo Assn One v. North Shore Trust & Savings: The Illinois Second District Appellate Court rules that a condo association may not recover from the foreclosure sale purchaser unpaid assessments that come due before the purchaser obtains title and payment of post-foreclosure sale assessments confirms the extinguishment of the lien created by the failure of the previous owner to pay assessments that came due prior to the purchaser obtaining title.

1010 Lake Shore Dr. Assn v. Deutsche Bank National Trust Co.: The Illinois Supreme Court upheld a ruling stating that an association’s lien for unpaid assessments prior to the judicial sale is not fully extinguished following a judicial foreclosure and sale until the purchaser makes a payment for assessments due after the sale.

NOT SURE WHAT ANY OF THIS MEANS? ACTHA will offer a Legal Forum/Ask an Attorney at the Spring Conference on Sat., April 16 at Drury Lane in Oakbrook. See details on Page 6/7. Registration available online as well.

Continued from page 1

street, repairs gutters or curbs, performs street cleaning or snow removal without some type of written agreement or reservation of rights, it may have created an implied dedication. The more public type functions which are performed with respect to the street, the more probable a dedication will have occurred. The longer the period of time over which a municipality performs these functions, the more likely it is that an implied dedication will have occurred. An implied dedication is just that. It is implied. There is nothing formal or technical initially. Municipalities should be encouraged, if at all possible, to perform one or more of these functions in hopes that, if they do, their activity will create an implied dedication.

The municipality, at any time, may conclude that it does not wish to continue with whatever activities had been performed. Should that occur or should the association wish to formalize the municipality's obligations, the association will have to request dedication and will have to do so based upon the implied dedication activities. The municipality may simply agree and allow formal dedication. It may do so with limitations on the dedication which it negotiates. If it does not agree and if the association wishes to pursue a confirmation that an implied dedication has occurred, the association must file suit for a court adjudication on the issue of dedication. The determination as to whether a dedication has

occurred will be based upon the facts.

Voluntary Dedication: A voluntary dedication occurs when an association makes request of a municipality for dedication of the streets. Dedication will only be accomplished if the association complies in all respects with the requirements of the municipality or negotiates some agreement. After the municipality agrees to dedication and all municipal requirements are met, public hearings are held and concluded and a dedication agreement is signed and recorded along with recordation of any plats identifying the portions to be dedicated.

Paying Taxes not Basis for Dedication: Associations, boards and unit owners often times believe that they can secure dedication because they pay taxes to the municipality and/or because they are owners. Payment of taxes is not considered basis for dedication. Motor fuel tax payments, which are used by the state and the municipality for local roads and local road improvement, have no impact on the dedication issue.

Political Climate: An important factor, which is often overlooked and which can have significant impact upon the ability to dedicate, is the political climate in the municipality. If a large number of associations simultaneously pursue

street dedication, the membership of those associations could constitute a political force in the community. If elections are near, then the members of the association can exert political pressure on candidates. The Association member boards and members can act as a coalition, have meetings with candidates and extract promises for street dedication, possibly on terms that are acceptable to associations. Historically the political process and use of the political process has been the most important factor in securing dedication of streets in various municipalities.

Activities Normally Involved in Formal Street Dedication: The first step is generally to secure a preliminary agreement on interest in dedication from the municipality. If the municipality has no interest whatsoever, it serves no purpose to proceed unless the association wishes to make a public record of their request or unless it believes that it can use the public forum to force an implied dedication. If there is an agreement or willingness, generally, the municipality will require the association to fill out an application. It will be an application similar to an application for permit, zoning or planning prepared or filed by a developer.

*85 W. Algonquin, Arlington Heights
60005*

847-593-5595 / jim@dicklerlaw.com

www.dicklerlaw.com

As a fledgling Board member many years ago, I attended a seminar about assessment collections. When the topic of evicting the owner and taking possession of the unit was presented as the way for an association to recover what is due, I raised my hand and asked “What do you do with the unit once you take possession of it?” Without missing a beat, the speaker said “You rent it out.” And that is what I have been telling clients for almost 35 years. More likely than not, the owner will respond to the notice that must precede the eviction lawsuit by making full payment. For those instances when it is necessary to press forward to obtain an Order of Possession and judgment against the owner, most often payment of the amount due (now including a significant amount of legal fees and court costs) comes in before the eviction is accomplished. Only a few times does the actual eviction become necessary. I know from first-hand experience that it is heart-rending to see a neighbor’s belongings on the curb.

Illinois law provides a direct route to possession of the unit if assessments are not being paid. This statutory remedy is an eviction (officially known as a “forcible entry and detainer” action), a temporary taking from the owner of the possession rights to the unit. Once the account is brought current, the owner can regain possession of the unit subject to the lease entered into by the association. It is a swifter and less expensive path than foreclosing the association’s lien rights. Eviction is a most effective remedy since it imposes a severe sanction on the owner and it grants a significant opportunity to the association—even if the governing documents prohibit leasing as a general practice. Few associations want to be landlords even if only temporarily. But the business of the association requires the Board to use all available remedies to collect the monies that are due to the association so that the association can pay for the services and materials necessary to administer the association.

The preparation and recording of a lien against the title to a unit generally is not necessary to protect and preserve the association’s claim against the unit and the owner due to non-payment of assessments. The costs involved in doing so might not be recoverable as part of the collection process.

Many factors are involved in a successful collection effort. It begins with having a collection policy in place that is enforced consistently and even-handedly. Collection efforts can be affected by a pending foreclosure or bankruptcy case. Taking possession of a unit allows the association an opportunity to generate rental income to offset the delinquent balance. That can be a more certain means of recovery than seeking to collect on a personal judgment against the owner. Specific guidance for an overview and on a case-by-case basis should be sought from the association’s legal counsel.

ACTHA'S NEW WEBSITE!

Launched the first of the year, it is more user-friendly and more informative than ever! Look for events and register! View what is happening legislatively and have ready access to laws pertaining to associations! Learn who is a volunteer for ACTHA, view ACTHA’s latest tax filings and find a business that specializes in serving the condo/townhome market! List a job opening or find someone looking to be hired! Access information—past newsletters, articles, webinars! **AND let a friend know that ACTHA is YOUR TRUSTED SOURCE! Forward to them for email sign up, to join and to LIKE US on FACEBOOK!**

ACTHA's Educational Conference Program

For more detailed information, including speakers and exhibitors, visit ACTHA's website: www.actha.org

BEGIN THE DAY

8—9:30 a.m.

GENERAL SESSION: Legal Forum/Ask an Attorney

This session will begin with an update on the various changes affecting community associations and what you need to know so your association can stay on the right path. The Ask an Attorney session will follow. Preference will be given to questions submitted in advance.

Your choice! Pick one program from each of the time slots offered!

11:30 a.m.— 12:30 p.m.

Leadership - Role of President & Function of Board: This session will cover qualities of successful leaders, how to set a vision for association board and how to recruit and develop good board members. The President should set the standard and build a knowledgeable and committed team.

1:30 p.m.— 2:30 p.m.

Oops! Some Acts Can Cause Big Messes: This session will describe some of the mistakes boards make, such as, approving contracts that are not in compliance with the governing documents, not giving proper notice, making decisions outside of proper meetings and more. Learn from others' mistakes so you can avoid these common pitfalls.

11:30 a.m.— 12:30 p.m.

Ponds & Natural Landscaping - Enhancement or Nuisance: Native vegetation and sustainable landscaping are the practices of enlightened environmentalists. The panelists will share ideas and methods to transition your ponds and landscaping so they will be easier to maintain. Associations can reduce the expense of maintenance when the transition is complete.

1:30 p.m.— 2:30 p.m.

Leasing & Crime Free Policies - Enhance Your Community: Many municipalities are assisting their local associations by encouraging adoption of policies to have safer and more neighborly communities. The panelists will give examples of tenant screening and leasing policies that have been proven effective and the methods to put this in practice.

11:30 a.m.— 12:30 p.m.

What's the Big Deal About Reserve Studies: If you have one, that's a good start. If you don't, you should begin the process now. But having one is not doing any good if you don't use it to your advantage. Learn how to use it for budgeting, to account for your reserve funds, report expenditures, and other uses of the information in the study.

1:30 p.m.— 2:30 p.m.

Rules - It's a New Set of Problems: How should your association handle the social issues that now crop up and don't have easy solutions? These present day nuisances include smoking and marijuana, noises, odors, pets, service animals, and more. Learn how to develop and revise rules so they will be enforceable.

END THE DAY

2:30—3:30 p.m.

Ask a Professional: Accountant, Attorney, Manager, and Insurance Broker

ACTHA ANNUAL MEMBERSHIP MEETING/BOARD APPLICATIONS

The annual membership meeting will take place at 3:45 p.m. on Saturday, April 16 at Drury Lane in Oakbrook.

If you are interested in a position on ACTHA's Board of Directors, email gael@actha.org for bylaw criteria and Board Application. All applications must be received no later than Monday, March 15.

Registration Form

YES!! I want to register for the Conference and Trade Show on Saturday, April 16 at the Drury Lane in Oakbrook Terrace. **Full Conference Access includes:** seminars, continental breakfast, sit-down lunch, Trade Show, parking and all seminar hand-outs.

_____ Full Access Attendance

_____ Trade Show only (FREE!)

Name of Association/Company: _____

PLEASE PRINT: Name

Address

Email

Title

REGISTRATION FEES:

ACTHA members: \$45 each

\$ _____

ACTHA members, 3 or more: \$40 each

\$ _____

Non-Members: \$120 each

\$ _____

TOTAL AMOUNT DUE

\$ _____

_____ Amount Enclosed; Make check payable to "ACTHA" and remit to 11 E. Adams, Ste. 1107, Chicago, IL 60603 or register online at ww.actha.org: *NOTE: No refunds are given after April 1 and there will be an additional charge of \$10 per person for anyone registering after April 14 or at the door. All cancellations are subject to a 25% handling fee.*

QUESTIONS???? Preference will be given to questions submitted in advance for the Ask an Attorney and/or Ask a Professional Panels. What is your question? (PLEASE PRINT and ATTACH)



We see more than just a roof above...



We see the people and the property it serves to protect.

- New Roofing
- Repairs
- Maintenance Programs
- Tapered Insulation
- Reflective Coatings
- Modified Bitumen
- Hot Asphalt
- Coal Tar Pitch
- P.V.C.
- EPDM
- T. P.O.
- Shingles
- Skylights
- Sheet Metal
- Gutters
- Drainage Improvements

CSR Roofing Contractors—providing superior service to greater Chicagoland for over 30 years. **PHONE:** 708.848.9119 **FAX:** 708.848.8947



Association of Condominium,
Townhouse, and
Homeowners Associations
11 E. Adams, Ste. 1107
Chicago, IL 60603

Question of the Month

By: Charles VanderVennet / 85 W. Algonquin, Arlington Heights 60005 / 847-593-8240
chuck@ctv-law.com / www.ctv-law.com



Q. We begin collection activity on “day 91” if no assessment payments have been received. What steps should be included in that process? Should a lien be filed? Should possession be sought? What is the best method of protecting the association’s income?

A. It is commendable that the association has a policy in place that automatically sends an account to collection. However I would suggest that the benchmark be “day 61” unless the monthly assessments are less than \$150—\$200, in which case it may not be warranted to begin collection efforts until “day 91.” When an account is 60 days past due, three months’ assessments have not been paid. That means that 25% of the association’s monthly income from that unit account has not been received. By 90 days that factor has grown to one-third of what is supposed to be collected from that unit for the year. No business can long sustain those levels of delinquency and cash flow disruption.