

Association of Condominium,
Townhouse, and
Homeowners Associations



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

July / August 2015

ACTHA Announcement	2
Tip on the Month: Fiduciary Duty	3
Expo Programs	4
Expo Registration Form	5
Smoking continued	6
Welcome New Members	7
Question of the Month	8

2015 PLATINUM SPONSORS

*ACM Community Management
Benchmark Contracting
Bral Restoration • Brian Allendorfer Co.
Caruso Management Group
CertaPro Painters
Community Advantage • Contech MSI Co.
• CRC Concrete Raising
Dickler Kahn Slowikowski & Zavell
Frost Ruttenberg Rothblatt PC
Fulleth Rosenlund Anderson PC
Hollinger Insurance Services
Hometown Painters
Independent Association Managers
Keough & Moody • Kovitz Shifrin Nesbit
M & J Asphalt & Paving
Penland and Hartwell • Pro-Home 1
Rosenthal Bros.
Servpro of South Chicago*

Smoking:

Tobacco, Marijuana, E-Cigarettes

By Ryan Shpritz of Kovitz Shifrin Nesbit

For years, smoking issues in an Association have been a challenge to Board members and Managers. Cigarette smoke is a nuisance and a common occurrence in a condominium community. Recently new forms of smoking issues have arisen in the form of e-cigarettes and medical marijuana. The challenges an Association faces related to “smoking” are likely to increase.

The effects of secondhand smoke were the impetus for the passage of significant changes in the law related to public smoking. Municipalities and States have banned smoking in public places, and recently New York, extended its ban to e-cigarettes. According to the Centers for Disease Control (CDC), secondhand smoke is the combination of smoke from the burning end of the cigarette and the smoke breathed out by smokers. There is no safe amount of secondhand smoke. Scientific research has shown that smoking, as well as secondhand smoke, is bad for your health. Secondhand smoke contains more than 4,000 chemicals and more than 50 carcinogens, and kills thousands of people every year. It adversely impacts the health of children and people with pre-existing health conditions. Most interesting to Associations, the American Society of Heating, Refrigerating and Air-Conditioning Engineers has reported that it cannot determine a safe level of exposure to secondhand smoke, and acknowledges that there is no current technology that exists which can remove chemicals that cause cancer from the air.

The Board of Directors of an Association has a fiduciary duty to look out for the health, safety and welfare of its residents. Many Boards are unclear as to its authority in a situation where

ACTHA's

FALL EXPOS

Sat., Sept 19—Northbrook

Sat., Oct. 3, Tinley Park

See page 4-5 for details

Continued on page 6



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

ACTHA IS PLEASED TO ANNOUNCE

That Nancy Moreno has been appointed to fill a vacancy on ACTHA's Board of Directors. She will serve out a term which will expire at the next annual meeting in April 2016.

Nancy resides and is a board member at The Lotus Condominium Association in Morton Grove.

Nancy has been serving on ACTHA's Education Committee and been a volunteer at events.

We are pleased to welcome her.

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.

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.

TIP OF THE MONTH

Fiduciary Duty

In the performance of duties, associations, officers and board members are required to exercise the care required of a fiduciary of the Unit owners. If this standard is not met, association assets and those of individual directors and former directors may be at risk. Fortunately, there are ways to avoid the risk of a big judgment against the directors and the association.

A fiduciary relationship is one in which there is special confidence in one who, in equity and good conscience is bound to act in good faith with due regard to the interest of the other. This duty requires that board members act in a manner reasonably related to the exercise of that duty, and the failure to do so will result in liability not only for the association, but also for the individuals themselves. To satisfy their Duty, board members must inform themselves of material facts necessary for them to properly exercise their business judgment.

Fiduciary duty applies to a wide variety of matters that fall within the power and duties of the board, including:

- ⇒ Association Budget/Finances/Accounts
- ⇒ Business procedures (Meetings, voting, conducting association business)
- ⇒ Acting as association instruments and rules require
- ⇒ Obtaining necessary and sufficient insurance

Examples: A board and/or its members breach their fiduciary duty by failing to strictly comply with the clear requirements of the Declaration, Bylaws and association Rules, and with applicable statutes. A breach of fiduciary duty can occur through action or through omission. Key cases include *Wolinsky, Palm v 2800 Lake Shore Dr Condo Assn* and *Goldberg v Astor Plaza Condo Assn*. Recall that the Palm case is a breach of fiduciary duty case.

The fiduciary duty is owed by the Board as a whole, and by its individual member—including former directors, if appropriate. In addition more recently, courts have expanded the duty to include the association itself. Insurance may help manage the risks too.

A successful claimant may be able to recover money damages, injunctive relief and his/her legal fees.

The good news is that if board members satisfy these duties by their actions they will be insulated from liability in the event a decision turns out to have been wrong/bad. This is called the “business judgment rule.” Part of a board’s duty of due care requires exercising diligent efforts to become informed. This typically requires consulting professionals/experts/attorneys, then making note in the records that you consulted and relied upon them in making a decision.

Finally remember that anything you say can and (probably) will be used against you in a court of law and in the court of public opinion.

James Arrigo of Tressler LLP

305 W. Briarcliff, Bolingbrook 60440 / 630-759-0800 / www.tresslerllp.com

jarrigo@tresslerllp.com

ACTHA'S NORTH EXPO: Sat., Sept. 19, Renaissance Center in Northbrook

(for more detailed info on the Expos, visit www.actha.org)

8—9:30 a.m.

LIFESTYLES OF THE RICH & FAMOUS - And not so famous Owners:

- Companion animals, language barriers, elder care, medical marijuana, concealed carry, guests vs. roommates
- Strategies and options
- Legal considerations
-

8—9:30 a.m.

RAISE THE DRAWBRIDGE & SECURE THE MOAT - Safety and Security:

- Minimizing risk
- Camera use, lighting, access to property and amenities, concealed carry, suspected criminal activity and privacy issues
- Use of police and/or the legal process

11:30—1 p.m.

HEAR YE, HEAR YE, ALL BE SEATED - Post-Palm, Legislation and Court Decisions:

- Recent legislative initiatives and enacted legislation
- Recent court decisions affecting community associations
- The new insurance change

11:30—1 p.m.

DON'T COMPLAIN, DO SOMETHING - Appeal Those Taxes:

- Advantages/disadvantages for appealing property taxes
- Process and procedures needed
- Items to consider: budgeting or billing back, senior freeze, and special assessment appeals.

ACTHA'S SOUTH EXPO: Sat., Oct. 3, Tinley Park Convention Center

(for more detailed info on the Expos, visit www.actha.org)

8—9:30 a.m.

INSURANCE FOR DUMMIES - Basics 101:

- Policies required under the law for associations
- New provisions to insurance to the Condo Property Act
- Changing standards and full replacement coverage
-

8—9:30 a.m.

WALK THE LINE— Rules & Regulations:

- Development and Implementation
- Legal implications or pitfalls to avoid
- How it works – a mock hearing

11:30—1 p.m.

DON'T MAKE IT A POPULARITY CONTEST - The Election Process:

- The process from notification to ballot counting
- Proxies, challengers and challenges to elections, campaigning do's and don'ts, and nominations from the floor
- Advantages/disadvantages of each election model

11:30—1 p.m.

RINGY DINGY, TO WHOM AM I TALKING - Texting not Talking:

- Email, websites, texting, Facebook, LinkedIn, Twitter and all the other forms of communication
- Convenient time-savers with drawbacks
- Protections when messaging electronically

EXPO REGISTRATION FORM

Free Trade Show! Free Parking! Free Breakfast!

Registration: 7:30 a.m. 1st Set of Seminars being at 8 a.m. Trade Show: 9—11:30 a.m.

Your pre-registering helps us with planning! Thanks in advance.

LABOR DAY SPECIAL! Register for either of the fall Expos

no later than Sept 7 and the fee is only \$25!!!

After September 7, the fee to attend any of the educational programs is:

ACTHA Member rate: \$ 30

Non-member rate: \$ 45

ATTENDING BOTH? SAVE MONEY. The fee is \$40 for both!

If registering Thurs., Sept. 17 or after for the North Expo or after Sept. 30 for the South Expo, add \$20 to the above prices.

Attending (check one) North Expo (Sept. 19) South Expo (Oct. 3) Both Expos

Attending the Trade Show only (Free) Attending the Trade Show & Seminars

Name of Association:

of Units: _____ Management Company (if applicable): _____

PLEASE PRINT. Provide the following info: 1) Name, 2) Board Member or Owner, 3) Address and 4) Email

Paying by Check? Make checks payable to "ACTHA" and remit to 11 E. Adams, Ste. 1107, Chicago, IL 60603

Credit card? Online—go to www.actha.org or with a credit card over the phone, call 312-987-1906

Not Enough Education & Learning?

At each of the Expos, ACTHA will once again offer 20 minute short topics. Among the offerings:

- Trees and Shrubs: Minimizing Winter Damage
- Developing a Responsibility Chart for Maintenance and Insurance
- Key Budgeting Points Boards Need to Consider
- Why Associations Need to Engage in Disaster Planning
- Misunderstandings of Ordinance and Law
- And of course, there are more! ACTHA will offer eight topics at each of the Expos—and all of them different! And all of them FREE as part of the Trade Show event.

Continued from page 1

owners complain of smoke entering their Unit from another Unit. The Board has the authority to adopt rules to restrict smoking in the Common Elements and Limited Common Elements, as those areas fall within the authority of the Board of Directors as prescribed under its Declaration and most State laws. However, often times smoke escapes into the ventilation system and hallways, and thus, into the home of another resident.

Many Declarations have a common ‘nuisance’ provision which states that no noxious or offensive activity or annoyance shall be permitted. Allowing the smoke from a Unit to enter another Unit or the Common Elements may be considered a violation of this ‘nuisance’ provision, and the Owner can receive a fine. Further, the Board can request that the Owner take remedial measures to prevent the escape of smoke from his or her Unit, by utilizing smokeless ashtrays or installing a ventilation system.

As more scientific evidence is gathered showing the negative impact of secondhand smoke and Owners become more litigious, many Associations will consider becoming a non-smoking or ‘Smoke-Free’ building altogether. Although there is no Illinois case law on point, comparable Association related Appellate court cases suggest that an Association may adopt an amendment to its Declaration to prohibit smoking in both the Common Elements and the Units of an Association. An amendment must be approved by a supermajority of the Owners. Such an amendment would ban smoking in the Association, and even require those Owners who currently smoke to cease smoking in their Unit. Violations of such a restriction may result in a fine, and if such a violation continued, the Board could seek a court order to compel an Owner not to smoke in his Unit or even force a judicial sale of the Unit. These are drastic measures, but the health of the community and its residents is something that should be paramount to the Board.

E-cigarettes are unlike conventional cigarettes, which burn tobacco leaves. E-cigarettes vaporize a liquid that is a blend of propylene glycol and/or vegetable glycerine, combined with flavoring and tobacco-derived nicotine. The long-term effects of ‘vaping’ have not been studied, but some studies have found that the particular matter of exhaled e-cigarette vapor is significantly lower than tobacco smoke, possibly reducing or eliminating secondhand inhalation. Until studies conclusively reveal the impact of e-cigarettes and its secondhand smoke, an Association may receive challenges on any policy banning the smoking of e-cigarettes in a Unit. An Association can still prohibit e-cigarettes in the Common

and Limited Common Elements, as those areas remain within the authority of the Board of Directors.

On August 1, 2013, Governor Pat Quinn signed The Compassionate Use of Medical Cannabis Pilot Program Act, which will create a program to introduce medical marijuana in Illinois. The Act took effect January 1, 2014 and addresses the growth, disbursement and use of medical marijuana in the state.

An individual desiring to use medical marijuana must qualify under the Act’s requirements and be registered with Illinois. Absent licensure under the Act, the smoking of marijuana in Illinois is not legal. Although there are potentially very complicated issues an Association may face when dealing with an Owner licensed to smoke medical marijuana, a strong argument can be made that the condition an Owner has that requires the licensing of medical marijuana will qualify that individual as disabled under the Federal Fair Housing Act, and as such, the Board must permit the Owner to smoke medical marijuana in their Unit. Regardless of whether an Owner is permitted to smoke medical marijuana within his Unit, the Owner must still comply with the Association policies and such usage shall not create a nuisance.

A smoking restriction may initially be tough to enforce, but education and explanation regarding the adverse health impact on individuals should ultimately lead to an understanding amongst the residents. A community should balance the residents desire to enjoy their home, with the health, safety and welfare of its residents.

750 Lake Cook Rd., Buffalo Grove 60089

847-537-0500 / www.ksnlaw.com

rsphritz@ksnlaw.com



Martin I. Klauber

First Merit Bank

SVP - Association Banking Manager

(847) 223-7920 Work

(847) 322-3149 Mobile

480 W. Center St

Grayslake IL 60030

CONDOMINIUMS • TOWNHOMES • HIGH RISES • MULTI-TENANT



www.csr-roofing.com

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

WELCOME NEW COMMERCIAL MEMBERS

APEX EXTERIORS

655 Shanahan Dr., South Elgin
60177 847-531-8960, F: 847-531-8966
Contact: Rebecca Brewer
ebrewer@apexext.com
Www.apexext.com

D-WING CONSTRUCTION

1585 Beverly Ct., #130, Aurora
60502
630-443-3706, F: 630-443-3706
Contact: Keith Weber
keithweber@
dwingconstruction.com
www.d-winginc.com

ITASCA BANK

308 W. Irving Park Rd, Itasca
60143
630-773-0350, F: 630-773-0364
Contact: Mark Stelter
markstelter@itascabank.com
www.itascabank.com

MI ROOFING & CONSTRUCTION

8102 Leomnt Rd., #1200,
Woodridge 60517
630-241-0001, F:630-241-0002
Contact: Jack Mancione
jack@werkmanagement.com
www.mancioneimprovements.com

U. S. SECURITY ASSOCIATES

18425 West Creek Dr., Tinley
Park 60477
877-340-1835, F: 708-444-1886
Contact: Steve Siegel
ssiegel@ussecurityassociates.com
www.ussecurityassociates.com

VOTE HOA / STRATEJA XL INC

(Electronic voting; tabulation)
13500 SW Pacific Hwy., PMB
#213, Tigard, OR 97223
503-427-9781
Contact: Scott McKeel
Scott@strateja.com
www.VoteHOANow.com



Question of the Month

By: Martin Stone of HSR Property Services

7601 W. 191st St., Ste. 1E, Tinley Park 60487 / 815-806-9990

Martin@hsrprop.com/ www.hsrprop.com

Q. I live in a condo. I have been told I cannot paint my door blue. If I am responsible for the limited common area, why is the Board able to deny this?

A. “While the repair, maintenance, and replacement of a limited common element (or at least the cost thereof) is the responsibility of the respective Unit Owner, the Board of Directors is responsible to maintain the *aesthetic integrity* of the buildings as well as the property as a whole, which is why the governing documents typically assign the Board with the power of architectural control over any portion of the unit or Limited Common Area that can be seen from the outside.

So, while it is YOUR door, painting it blue would affect the way your building looks. And although blue happens to be my favorite color, a number of units, all in a row, with white doors and *one* blue door would look pretty odd. A string of all different colored doors would likely look downright unsightly.

If it's any consolation.... While sacrificing personal expression by not being able to have a blue door, you gain the overall neat and orderly appearance of the property as a whole which is usually what attracts people to buying a condo or townhome in the first place. Imagine if the surrounding doors of your neighbors were pink, teal, orange or even *black!*