

Association of Condominium,
Townhouse, and
Homeowners Associations



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Begins in Chicago on
Wed., June 10

Prescribed Fire Begins with Safety and Ends with Thriving Flowers and Wildlife

By Jake Hagelow of Pizzo and Associates

From an early age, we are taught not to play with matches and that fire can be harmful if misused. Fast forward to present day and contractors are now performing controlled burns around community detention basins and open areas just feet from our homes. Sound a bit dangerous? YES, if the proper precautions are not taken to ensure the safety of community residents, burn crews, and the surrounding property.

In light of recent events where a controlled burn being conducted by a contracting company damaged multiple homes, boards and management companies may see an increase in concern and apprehension regarding prescribed fire. It is important to be knowledgeable of this management technique in order to effectively communicate with your contracting company and community residents.

Here are some useful considerations about controlled burns:

All fire is dangerous. Hire a contractor with extensive prescribed fire experience and a well-established safety plan. While experience is important, they also need to take the proper precautions to ensure that the weather conditions are prime for a safe and effective burn. Temperature, Humidity, Wind Direction, Wind Speed, Cloud Cover, and Recent Precipitation are the important elements for a contractor to consider. While weather cannot be controlled, the contractor can control the decision whether or not to ignite a fire.

Only qualified, insured personnel should be on site.

Require that your contractor list "Prescribed Fire" as the covered activity on their certificate of insurance and make sure they list the owners or association and the management agent as additional insured. Be sure to ask about previous incidents before you sign a contract and then again before every burn is carried out. The board should always ask to review the contractor's burn plan for their site. Furthermore, an Illinois Certified Prescribed Burn Manager (CPBM) is required to write the burn plan and to be on site the day of the burn.

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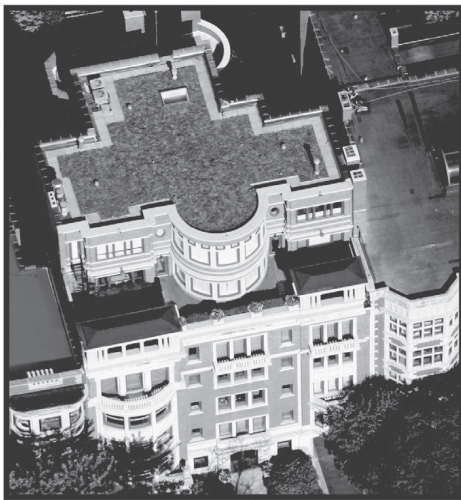
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TIP OF THE MONTH

Chicago Energy Benchmarking

All condominium buildings in Chicago with more than 250,000 square feet must meet the Chicago Energy Benchmarking Ordinance by August 1. Buildings between 50,000 and 250,000 square feet have until June 1, 2016.

This ordinance is designed to raise awareness of energy performance through information and transparency, with the goal of unlocking energy and cost saving opportunities for businesses and residents. This is done to track whole-building energy use, provide annual reports to the City and verify data and accuracy every three years. Buildings complying for the first time in 2015 must also have their data verified by an in-house or third party individual who holds one of six credentials recognized by the city. Data verifier information must be included as part of each building's report.

Buildings needing to comply should have received a notification letter from the City of Chicago. If so, your building should

1. Create a Portfolio Manager account and property profile by going to www.EnergyStar.gov/Benchmark
2. Gather the information as required
3. Set up the property in Portfolio Manager
4. Obtain monthly, whole-building energy use data for January—December 014. This can be obtained from ComEd and Peoples Gas
5. Enter Energy use data for all fuel types in the Portfolio Manager along with the building's Benchmarking ID
6. Run the Data Quality Checker
7. Verify building data by a recognized professional as provide in the Benchmarking Ordinance
8. Add data verifier information to the Portfolio Manager
9. Report to the City of Chicago

Questions: 1-855-858-6878 / info@ChicagoEnergyBenchmarking.org

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LEARN & LEAD

ACTHA's certification program for board members and owners begins Wednesday, June 10 in Chicago. For details visit: www.actha.org/certification

WALK A PROPERTY!

Learn first—and what to look for in your trees and shrubs. Location, type, disease, care and maintenance. Just a few topics covered in this unique program. Thursday, June 10 in Naperville. For more info visit: www.actha.org/seminars

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They serve as the direct supervisor of the personnel on the prescribed burn and are responsible for implementing a prescription specific to the site. They also serve as the contact for first responders if they are called to the fire. A CPBM should also have training such as completing National Wildfire Coordinating Group firefighting courses above the basic S130/S190/I100.

Contractors should not be on site without the appropriate equipment. Crews should always wear Personal Protective Equipment (PPE) which includes Nomex or Kevlar clothing, eye protection, Nomex face and neck protector, leather boots and gloves, a fire resistant hard hat, and natural underlayers. At a minimum, equipment needed to perform a controlled burn is a drip torch, flappers, backpack pump sprayers and rakes. Contractors should also have plenty of water on site which can include an ATV with a 70 gallon sprayer and a truck with at least 200 gallons of additional water. Proper firefighting equipment is custom built for controlled burn purposes and should not also be used as pesticide spraying equipment. If the company you hired is not equipped with adequate PPE and equipment, this may be an indicator that they are not qualified to manage a controlled burn.

Securing a burn permit takes time. Permits are required in order to perform a controlled burn. It often takes more than three months to process an Illinois Environmental Protection Agency (IEPA) permit. Applying for County and local permits requires a current and active IEPA permit, so a contractor cannot apply for them until the IEPA permit arrives. Work with your contractor to establish a long-term management plan so controlled burns can be scheduled well in advance, giving

your contractor enough time to secure the necessary documentation.

Communication is key. Your contractor is required to distribute notification flyers to all residences within approximately ¼ of a mile of a scheduled burn or post notification signage at the entrance of the site. The notifications should contain information about prescribed fire, why it is used, the timeframe that the burn will be carried out, and contact information for anyone who would like more information. Ask your contractor to speak at a board meeting if there are lingering concerns from residents so they can be addressed directly.

Fire is natural. Fire is essential to the restoration of native ecosystems, just as fire has been a significant force in shaping the Midwestern landscape for thousands of years. Whether ignited by lightning or purposely set by Native Americans, it helped to shape plant and animal communities that are dependent on fire for survival and stability. Today, fire is used for a variety of reasons including controlling invasive species, stimulating the growth of native plants, reducing woody growth, and increasing plant diversity. The removal of the insulating layer of dead plant matter from the previous growing season combined with the darkening of the soil by ashes and charred material mean that the soil warms more quickly in the early spring, allowing plants to grow and seeds to germinate earlier. This early growth allows the growing season to be extended by as much as three weeks. Wildlife benefit from burns too. Fire stimulates new growth for all to feed on.

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CONGRATULATIONS....

Joe Fong (Westgate Terrace C.A., Chicago), Mike Mathews (854 N. Marshfield C.A., Chicago), Diane Pagoulatos (Whispering Lake T.A., Lake Bluff), Myrna Martinez Flats of Old Irving Park C.A., Chicago) and Ron Sirotzki (Spring Lake Farms HOA, Lake in the Hills) on their election to ACTHA's Board.

Elected officers are: President Beth Lloyd (Partridge Hill T.A., Hoffman Estates), Vice-President Joe Fong, Secretary Jackie Fanter (Wedgewood Commons T.A., Orland Park), Bob LaMontange (Lake Hinsdale Village, Willowbrook).

ACTHA conducted its first electronic election for Directors and changes to the bylaws (approved). It was very successful. Voting increased by 168%! over past years.



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Urban Development (HUD) regulations have an effect on the relationship between Association and unit owner as well. Finally, perhaps not as much contemplated, yet relevant nonetheless, are the constitutional rights of due process and freedom of speech.

An example of due process is the right of a unit owner to be heard and put on evidence or mitigation before a fine may be levied. With respect to freedom speech, which derives from the first amendment of the U.S. constitution, it's probably safe to say anyone living in this country has at least a working knowledge of the concept of freedom of speech. What may be less known are the limits on our cherished freedom of speech. For example, threatening comments or hate speech do not enjoy the same protections political or religious speech does. In between is commercial speech which, while generally protected, certain aspects such as false advertising is not. Finally, freedom of speech may be limited by reasonable time and place restrictions.

So the question is what can be done about a tenant of a unit owner who has taken to social media to malign the Association or its board? Again, noting the reach of the Association will be tenuous in such situations, the answer will depend on the facts. If for instance, the tenant wrote something to the effect that the unit owner "*believes* the Association is poorly run," such speech being a matter of opinion, would enjoy a great deal of protection. In contrast, if the unit owner were to write "board member Suzy Smith is stealing from the Association," such may not be protected. However, the statement being libel, would be attributable to the board member personally and would not be a claim the Association could pursue. That said, the statement could still be protected if the statement were true. As to the Association itself, being that it is an entity as opposed to a natural person, the possible causes of action available to the Association are less numerous than to a person. Beyond that, the question that must be asked is what damages have resulted from the tenant's statements. For example, if it could be said the tenant's statement caused an actual contract for a sale of a unit to be terminated ("tortious interference with a contract") and actual damages could be proven, then perhaps a cause of action would exist, but again more likely it is the unit owner whose sale was affected that would have standing to sue. More tenuous and more difficult to prove would be where the claim is the statements of the tenant are causing otherwise ready, willing, and able purchasers to decline to enter into contracts for purchases of units ("tortious interference with a prospective contract") The two previous examples are more common in litigation between business competitors than Associations and are quite expensive suits to prosecute.

To summarize, where a tenant of a unit owner has taken to social media to make defamatory or disparaging statements regarding the Association, and Association loses the power it wields through its governing documents and must rely more on legal remedies such as tortious interference with contractual relationships. Moreover, if the derogatory statements are directed toward an individual as opposed to the Association itself, then it is the individual who has the cause of action rather than the Association itself. Finally, if the statements are in the form of genuine opinion or true, though damaging such may be protected speech. Given the foregoing, the most effective defense an association can employ against negative comments posted on social media is posting its own positive speech. Many websites that permit users to post comments also permit other parties to report remarks that violate rules of such sites. Additionally, certain sites also permit other parties to comment directly to the posted remarks. Caution must be used in undertaking these countermeasures so as not to risk any liability to the association in this regard. As often is the case, an association should consult with its legal counsel when confronted with such a situation.

Question of the Month

By: William Chatt of Chatt and Prince, PC

724 N. York Rd., Hinsdale 60521 / 630-326-4930 / bchatt@chattprince.com

Q. What can be done about a unit owner's tenant who has taken to social media to disparage an Association or its board?

A. For those associations that permit rental of units, it is not uncommon to have issues caused by tenants themselves. While the financial responsibility for assessments, fines, and the like still lies with the unit owner, the tenant is also bound by the governing documents of the Association under section 18(n)(i) of the Illinois Condominium Property Act. So it goes, whatever an Association could lawfully do to curb the behavior of the unit owner, the same could be done for the tenant.

While an association has great latitude to govern the behavior of unit owners and their tenants with respect to the use of common elements and the units, the ability of an Association to control the behavior of owners or their tenants outside of the Association is minimal at best. For starters, an attempt to regulate behavior outside the association within the declaration, by-laws, or rules would be invalid as by its very nature it would be regulating behavior that has nothing to do with the Association.

In working through the issue, aside from the aforementioned Illinois Condominium Property Act and the Association governing documents, there are other places to look with regard to regulating behavior of owners and tenants. As the vast majority of associations are organized as not-for-profit corporations, the Illinois General Not-For Profit Corporation Act (805 ILCS/105 et seq) is another statute that affects governance of an association though there would not be much applicability to the immediate topic. Additionally, the Federal Fair Housing Act (42 U.S.C. 3601), the Illinois Human Rights commission, and the Department of Housing and

