

Association of Condominium,  
Townhouse, and  
Homeowners Associations



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MAY 2013

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**With the Illinois General Assembly in session, legislation is changing rapidly. We recommend checking ACTHA’s website for the most current status and bill offerings: [www.actha.org](http://www.actha.org)**

## MAINTENANCE OF COMMON ELEMENTS

By: Maya Ziv-El of Keough & Moody, P.C.

### Common Elements-What are they and why should they be maintained?

One of the primary responsibilities of a Board of Directors is maintaining the common elements. Every Association defines a common element a little differently, but generally speaking, it is any part of the Association that is beyond the unit itself and not otherwise defined as a limited common element. Common elements can include roofs, exterior walls, landscape, utility areas, hallways, among other items.

Maintaining the common elements is important on many levels. It is important at minimum to maintain the property value, and may even increase the resale value of your unit. It is also important to maintain the aesthetics of the property as well as the integrity and safety of the structure. If common elements are not being maintained properly, not only does the Association suffer through the disrepair, but the situation may lead to loss of revenue of assessments, costly lawsuits, and an unhappy community overall.

### The Costs of Failure to Maintain the Common Elements

In June of 2012, the Illinois Appellate Court held that in a lawsuit to collect common expenses from an owner (through seeking an order for possession,) the owner could raise as a defense to not paying assessments the issue of the Association’s failure to maintain common elements. *Spanish Court Two Condominium Ass’n v.*

*Continued on Page 4*



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# TIP OF THE MONTH

## Cost-Conscious Tree and Shrub Care

With landscape plants, just as with buildings, deferred maintenance and incomplete planning can mean spending more in the long run. Here are some tips for saving money on tree and shrub care:

**Consult an expert.** For a nominal fee, a certified arborist can inspect your trees and shrubs, and identify any problems, before they escalate and cost more to treat.

**Consider integrated pest management (IPM).** The core of IPM is inspecting for pests and treating only when necessary, rather than treating *in case* a particular pest will become a problem. It's a greener alternative all around: saving money and reducing pesticide use. When treatments are necessary, IPM incorporates natural alternatives, like beneficial insects, whenever possible.

**Invest in preventive care.** Want to cut your storm-damage costs? Have your trees pruned regularly. Most trees would benefit from pruning every 3-5 years on average.

**Test your soil.** You may be fertilizing your trees unnecessarily or incorrectly. Find out by having your soil tested – one size doesn't always fit all. Soil testing is inexpensive and will help determine which nutrients are most lacking.

**Select the right tree for the right place.** Minimizing tree-care costs begins with choosing a tree that is well-suited for the intended location. A young tree may seem the right size when you plant it, but what about when it's mature? If it grows into a large shade tree, and it's been planted near a building, you will need to trim it more often to keep it away from the roof. If you plant crabapple trees near walkways, you'll spend more on sidewalk maintenance to keep the walkway free of fruit and safe for pedestrians.

**Plant hardy species; avoid susceptible ones.** Some hardy species include Norway spruce, sugar maple, hackberry, Peking lilac, Katsura tree, bald cypress, hornbeam, ironwood. A sampling of problem-prone species includes river birch, pin oak, red maple and Austrian pine.

**Ensure that trees are planted properly.** Hole depth and size are critical to helping trees thrive over the long term – so requiring less maintenance. Trees that are planted too deeply can suffer from a host of problems. The area where the roots flare out from the trunk should be visible; your tree should not look like a telephone pole coming out of the ground. The planting hole should be two to three times wider than the size of the root ball if possible.

**Have a long-term plan.** A three- to five-year tree-care plan enables you to prioritize your spending on where it's most needed. A certified arborist can help.

Tom Tyler, Certified Arborist ^ Bartlett Tree Experts ^ 751 N. Bolingbrook Dr., Link 12, Bolingbrook 60440  
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*Question of the Month continued from page 6*

For a common interest community association (non-condominium community), the community association does not possess the same eviction remedy against a tenant for violations of the governing documents per the Common Interest Community Association Act (CICAA). Only if the Declaration itself grants the association an eviction remedy does the association possess the remedy to evict the tenant. However, per Section 1-30 of CICAA, the board may levy fines against the owner of the unit to take action against the unruly tenant. For common interest community associations, the Forcible Entry and Detainer Act (eviction statute) is limited to recovery of non-payment of assessments against owners.

*Carlson*, No. 2-11-0473 (Ill. App. Ct., June 27, 2012). In practical terms, this means that in certain instances an owner can lawfully withhold assessments if the Association is not maintaining the common elements. This recent law makes it more important than ever for an Association to make maintenance of the common elements a top priority.

Besides the potential for lost assessment income, a Board's failure to maintain common elements can also open up the Association to various forms of liability. For example, a failure could result in damage to an Owner's unit, or maybe even cause injury to an owner because of unsafe conditions. Depending on the situation, the Association may find itself in court defending against claims for negligence, injury, breach of fiduciary duty, etc.

An Association may also have to defend against a lawsuit for breach of contract. Besides being outlined in the Illinois Condominium Property Act, the duty to maintain common elements is also usually found in the Association's governing documents. Therefore, an owner may attempt to bring an action against the Associa-

tion for breaching the governing documents (the "contract") by failing to maintain the common elements.

### So What Should We Do?

There are no winners when common elements are not properly maintained. The owners can suffer because of maintenance issues that may affect individual units and lost value of their units. Associations suffer collectively because of the costly repercussions of owners withholding assessments, defending expensive lawsuits, risking unsafe structures, and overall disgruntled members.

A concerned member can start by attending a board meeting, contacting the manager, or even running for a board position. An Association should begin by ensuring that its management company has the knowledge and foresight to keep the property at its best.

*Also contributing Rosario Spaccaferro of  
Keough & Moody, P.C.,  
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## Congrats to ACTHA's Certified Leaders!



Pictured left to right: Back Row: Mike Cetera, Linda Sliva, Cathy Rude, Gary Schroeder, Virginia Wachsmuth\*, Jennifer DeLisle\*, John Wangles, Joel Davis, of CAU (Faculty)

Front Row: Glenda Ricono\*, Patty Anne, Diane Pagoulatos\*, Geri Wanke, Cathy Broughton\*, Julie Cramer\* and Bridget Mukrite

\*denotes successful completion of Learn and Lead, ACTHA's certification program for owners.

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## Question of the Month

By: Howard Dakoff of Levenfeld Pearlstein LLC

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**Q.** We believe we have a tenant (owner renting out his unit) who is involved in an illegal activity. What steps can a board take to establish a policy regarding renters and if it appears that a renter is in violation, other than applying rule enforcement, is there a way to evict a tenant?

**A.** It is well settled law that a condominium association may adopt rules and regulations

regarding leasing. *Apple II Condominium Assn. v. Worth Bank & Trust Co.*, 277 Ill.App.3d 345, 659 N.E.2d 93, (1<sup>st</sup> Dist. 1995).

Pursuant to Section 18.4(h) of the Condominium Act, the Board may adopt leasing rules after a meeting of Unit Owners called for the specific purpose of discussing the proposed rules, the notice of which must contain the full text of the proposed rules. The proper notice for such meeting shall be no less than ten (10) and no more than thirty (30) days' notice to the Unit Owners. The notice should also call a Board meeting for the *same evening* to be held directly after the Unit Owner meeting. After the Unit owner meeting where only discussion occurs, the Board will close the Unit Owner meeting and then open the Board meeting. Merely a majority of the Board may adopt the leasing rules.

Whenever a tenant is in violation of the Association's governing documents (i.e. Declaration, By-Laws or rules and regulations), the Board has a few remedies at its disposal. These remedies include, the ability to levy a fine against the unit owner for the tenant's conduct and, if necessary, pursuant to Section 18.4(n) of the Condominium Act, the Association may file lawsuit to evict the tenant (i.e. file a lawsuit jointly against the unit owner and the lessee under Article IX of the Illinois Code of Civil Procedure for failure of the unit owner/tenant to comply with the Association's governing documents and/or leasing restrictions.) If criminal activity is occurring, the local police should be consulted to address such activity.