

Association of Condominium,  
Townhouse, and  
Homeowners Associations



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

## September 2013

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### UPCOMING ACTHA EVENTS

**ACTHA'S SOUTH EXPO SEPT. 28**

**ACTHA'S NORTH EXPO OCT. 12**

**WEBINARS EVERY MONTH!**

## LEGISLATION BECOMES LAW

Michael C. Kim of Michael C. Kim & Associates

With the Governor's signature, six new Public Acts (P. A.) became law.

**P. A. 98-0232** (HB1773) becomes effective January 1, 2014. This Act amends the Common Interest Community Association Act (CICA) to state that the common interest community association (non-condo properties) may not enter into a contract with an existing board member or a corporation or partnership in which that board member or his/her immediate family member has a 25% or more ownership unless prior notice is given to the members (owners), who then have the right to petition for a referendum on that proposed contract.

**P. A. 98-0241** (HB 2374) became effective August 9. This Act amends CICA Act to include siblings (brothers and sisters) for purposes of determining whether a director has a conflict of interest in a proposed transaction involving an association.

**P. A. 98-0282** (SB 1606) becomes effective January 1, 2014. This Act amends the Illinois Condominium Property Act (ICPA) to limit the maximum vote to amend the condominium instruments (that is, the declaration, bylaws and plat of survey) to a 3/4 vote of all the unit owners (by percentage of ownership interest). It also eliminates the restriction that such an amendment cannot change unit boundaries, a unit's percentage of ownership interest, number of votes or liability for common expenses; however, other ICPA provisions dealing with those subjects would still apply.

*Continued on page 4*

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# TIP OF THE MONTH

## Budget Time and Reviewing Reserves

Face it, summer is over and it's not coming back, until next year that is. Did you get to do all of the fun things you wanted? Think back to late May. Didn't it seem like you had an eternity of carefree days to accomplish all of those projects and activities on your list? Somehow those weeks and weekends have come and gone, and whether or not you were able to cross off all of the items on the list, now it's time to catch up on actual business. For example, the importance of finalizing that budget for next year. While not the most exciting task on the list, it's one that feels good to complete, especially if you have confidence in the numbers and scheduled projects.

One of the major components of the budget is the reserve aspect. How much is enough? And which projects should be on the agenda for the upcoming year? Associations are recommended to rely on a current reserve study that has taken into account all of the common elements that the association is responsible for, what replacement of capital repair projects to anticipate, and what the estimated cost for the projects will be. The study will also provide a recommended reserve fund contribution broken down on an annual basis. A key word regarding reserve studies is "current". Relying on a 10-15 year old study is probably not in your best interest, no pun intended, considering the changing interest rates during that span. Changing conditions at the property, market cost adjustments, deviations from the study recommendations, and expectations for board and residents make having an updated study vital to an informed budget formulation.

If the study is being updated this year prior to the budget or a new study is being performed, it's a good tool to aid in the reserve portion of the budget. Short of having an update of the study performed, consulting firms can provide a summary review of a property as well as review an existing study to prioritize anticipated projects and corroborate estimated costs. This type of review can provide some clarity regarding which projects will be needed in the coming year as well as insight into the adequacy of budgeted reserve funding amounts for less than the cost of a complete study update.

While the end of summer and budgeting process may not be something to look forward to, having a current study with a fresh review can provide confidence in the reserve funding and capital project portion of the budget, and an added peace of mind for the coming year.

*Grant Ostreko of Waldman Engineering Consultants  
1240 Iroquois Ave., Naperville 60563 ^ 630-922-3000  
granto@waldmaneng.com ^ www.waldmaneng.com*

## FORECLOSURES!!!

Does your association have foreclosed units? Are you prepared? Winter is coming. Do you know who to contact if something goes wrong with the unit? Do you know how the association can recoup an insurance loss due to negligence? Does the association have any recourse as to who the unit is sold to? If you are unsure of these questions, we have a seminar for you! Register for the South Expo on Sept. 28 and learn about these questions and other topics related to the foreclosure issue.

## RULES!!!

Does your association operate on the basis that rules apply to some but not others? How does your association respond when it is owner against owner—let's say noise! How do you handle the owner who is violating a rule over and over and is willing to pay the fine because in their mind, it's worth it. When the courts say "reasonable", what does that mean? ACTHA will host a seminar on "Rules" at the South Expo which will provide key tips on how to develop, how to enforce with lots of time for Q & A!

*Continued from page 1*

**P. A. 98-0302** (HB 2527) becomes effective January 1, 2014. This Act amends the General not for Profit Corporation Act to require that in residential cooperatives, a decision to dissolve the corporation/cooperative must be held at an open meeting and vote and not be written consent or vote without a meeting.

**P. A. 98-0365** (HB595) becomes effective January 1, 2014. This Act amends the Community Association Manager Licensing and Disciplinary Act by creating the concept of “community association management firm” which must be licensed under that Act, and “supervising community association manager” which is an individual licensed under the Act and who manages and supervises a firm. At least two members of the Community Association Manager Licensing and Disciplinary Board (which has 7 members) must be supervising community association managers. The Act eliminates consideration of a designation “awarded by community association management organizations in the State” (such as the Community Associations Institute PCAM designation) as means of satisfying the initial educational

requirement and the initial examination requirements for licensure. The Act establishes the licensure requirements for supervising community association managers, which includes consideration of real estate managing broker licensure; and also the licensure requirements for a community association management firm. Importantly, community associations organized as not for profit corporations, are no longer required to pay fees to cover the administration of the Act. Basis for refusal to license or renew a license or for disciplinary action are expanded to include entry of an administrative sanction by a governmental agency due to conduct which is fraudulent or dishonest.

**P. A. 98-0463** (HB 2994) Makes a technical change to Section 22.2 of the ICPA, replacing “Federal Housing Authority” with “Federal Housing Administration.”

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**NOTE:** ACTHA supported all of the above legislation. Mike Kim will be a presenter along with ACTHA’s lobbyist John Carr and State Rep. Elaine Nekritz for a legal update at ACTHA’s North Expo in Wheeling on October 12.

*Continued from page 8*

the terms of the contract, it will be the language set forth within the contract document that will control unless those terms are ambiguous. It is best for the terms to be as specific as possible so that both parties know what is expected of them.

Generally speaking, management provides assistance to the Board’s administrative efforts. Management’s expertise is a valuable resource for the Board when it comes to deciding what must be done to conduct the Association’s business or in terms of managing the property. Management supplies staffing to handle many of the day-to-day and seasonal tasks facing the Board. Management personnel use their knowledge of proper procedures and best practices to guide the Board in its efforts. Management serves as an interface with the Unit Owners and residents as well as with the vendors who work for the association.

Management takes its direction from the Board. As an “agent”, management can exercise only the authority given to it by the “principal” through the contract approved by the Board and by votes taken by the Board from time to time. Management has no separate authority to decide things or determine what must be done relative to the administration of the property.

A Community Association Manager is an important member of the team of professionals that help the Board administer the property. Properly utilized, his or her involvement with the Board should provide significant benefits to the association.



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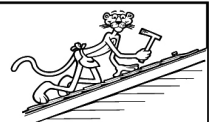
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# ACTHA's Fall Expos

- Sept. 28: Tinley Park Convention Center / Oct. 12: Westin Chicago North Shore
- Both Expos feature a trade show and Exhibitor Showcase Presentations  
Registration form for Educational Seminars is on page 7 or one may register online at [www.actha.org](http://www.actha.org)

## WHAT YOU WILL LEARN

### *South Expo Educational Programs*

### *North Expo Educational Programs*

8:30 - 9:30 a.m. Choose from one of two seminars

8:30 - 9:30 a.m. Choose from one of two seminars

#### **Foreclosures:**

- Timeline for protecting the association
- Steps to take pending a foreclosure, during the foreclosure and after the process has completed
- Q & A

*Presenters: Martin Stone of HSR Property Services and Doug Sury of Keay & Costello*

#### **Liability: Save Money/Reduce Problems**

- Major items that cause liability
- The importance of developing a maintenance schedule
- Q & A

*Presenters: Kara Cermak of Rowell and Ken Sampson of Dasco Insurance*

#### **Being a Good Board Member & Owner:**

- Best practices on why an association works well
- Pitfalls to avoid
- Q & A

*Presenters: Gabriella Comstock of Keough & Moody and John Santoro of Lieberman Management*

#### **Legislative and Legal Update**

- Recently signed legislation that is now law
- Court decisions impacting associations
- Influencing legislators

*Presenters: State Rep. Elaine Nekritz, Attorney Michael Kim and John Carr, ACTHA's Lobbyist*

11:30 - 1:00 p.m. Choose from one of two seminars

11:30 - 1:00 p.m. Choose from one of two seminars

#### **Development and Enforcement of Rules**

- Legal requirements for development as well as enforcement
- Pitfalls
- Q & A

*Presenters: Attorney Barry Kreisler and Dale Nusbaum of Hillcrest Management*

#### **Collections: If at First You Don't Collect**

- Establishing and enforcing collections
- Association options after all else has failed
- Q & A

*Presenters: David Hartwell of Penland and Hartwell and Keith Hales of Hales Property Management*

#### **Not a Condo?**

- Legal requirements
- Insurance requirements
- Q & A

*Presenters: Lara Anderson of Fullett Rosenlund Anderson, Karyl Foray of Rosenthal Bros. and Randy Rosen of Rosen Management Services*

#### **Elections: Statute and Style**

- Legal requirements
- What flexibility exists for conducting elections
- Q & A

*Presenters: Kerry Bartell of Kovitz Shifrin Nesbit, Nancy D'Andrea of Premier Community Management, and Sarah Gullett-Johnson of SGJ Property Management*

# Fall Expo Registration Form

*Free Parking! Free Breakfast!*

Trade Show and Exhibitor Showcase Presentations from 8:00 - 11:30 a.m.

There is no charge to attend the Expos or Showcase Presentations  
however pre-registration will assist with planning

**THE FEE TO ATTEND ANY OF THE EDUCATIONAL PROGRAMS is:**

ACTHA Member rate:     \$ 30 or \$ 25 (if using the promo code available from presenters and exhibitors)

***Register by September 16 and pay only \$ 25!***

***Register for both and SAVE 33%: \$ 40***

Non-member rate:     \$ 45 per person

Late Fee:             Add \$10 if registering after Sept. 26 for the South Expo and after Oct. 10 for the North Expo

**YES!** I want to register for

\_\_\_ South Expo: Sept. 28, Tinley Park Convention Center

\_\_\_ North Expo: Oct. 12, Westin North Shore in Wheeling

\_\_\_ Both the South Expo and the North Expo

\_\_\_ Attending the Trade Show only (Free)     \_\_\_ Attending the Trade Show & Educational Seminars

\_\_\_ Amount Enclosed

Name of Association: \_\_\_\_\_

# of Units: \_\_\_ Name of Community Association Manager (if applicable): \_\_\_\_\_

PLEASE PRINT: Name

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## Question of the Month

*By: Charles VanderVennet, Attorney*

*85 E. Algonquin, Arlington Heights 60005 ^ 847-593-8240 ^*

*chuck@ctv-law.com ^ www.CTV-law.com*

**Q.** In our condo association, it seems that the manager runs the show. The Board members do not seem to do anything except always approving what the manager says must be done. How can that be? What can an owner do to stop that?

**A.** A condo association acts by and through its Board of Managers (“Board”) to administer the property. Section 18 of the Illinois Condominium Property Act (ICPA) requires the association’s bylaws to include certain provisions including that the “board may engage the services of a manager or managing agent” (Sec. (a)(5)). The requirements of Sec. 18 apply to all condominiums in the State. Contradictory language is deemed void as against public policy. Bylaws that do not contain such language are deemed to incorporate those provisions by operation of the law.

The Community Association Manager Licensing and Disciplinary Act became law in 2010 and has been amended from time to time. Since then, those who engage in the business of managing condos and other community associations must hold a current and valid license to do so. Certain qualifications must be met before such a license is issued to an individual or firm. A licensed individual is referred to as a Community Association Manager (“CAM”). If a Board decides to hire management, only a CAM or a Community Associations Management Firm (“CAMF”) should be hired for that work.

To hire management or not and, if so, under what terms, is a decision that is within the jurisdiction of the Board, not one to be made by the Unit Owners. The tasks to be accomplished by the CAM or CAMF are established by the contract terms. Those terms can be as broad or as specific as the parties believe is necessary to describe adequately what performance is expected from management. When it comes to enforcing