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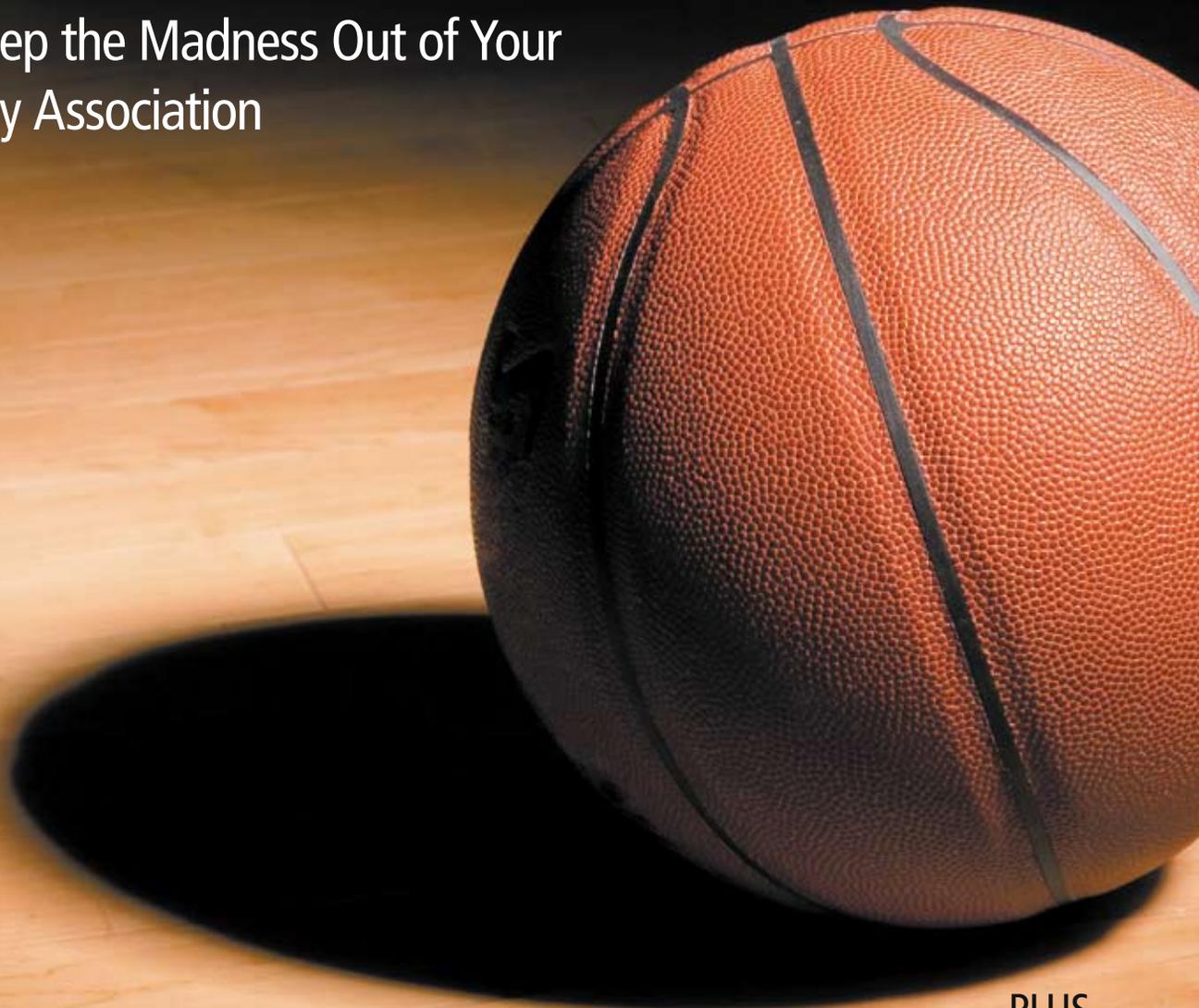
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Spring 2017

March Madness:

How to Keep the Madness Out of Your
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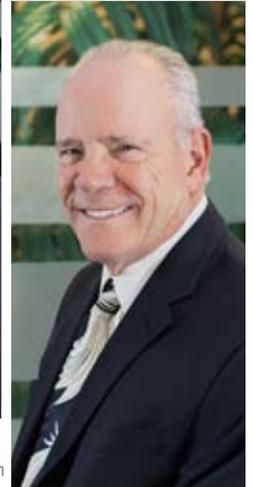
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March Madness:
How to Keep the
Madness Out of
Your Community
Association



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What are Governing Documents?

By Mark L. Wade, CMCA, AMS, LSM, PCAM

What Are Governing Documents?

We're always talking about the association's governing documents, but what are they?

State Law

Arizona has statutes governing condominiums and planned communities. In addition, most associations are subject to the state Non-Profit Corporation Act.

Declaration, Master Deed, or Proprietary Lease and Their Covenants and Restrictions

Planned communities are created by declarations (also known as master deeds). Cooperatives are created with proprietary leases (also called occupancy agreement). These contain the restrictions that regulate residents' behavior, they define owner's rights and obligations, and establish the association's responsibilities.

Articles of Incorporation

Most associations, and all cooperatives, incorporate and have articles of incorporation that define their purposes and powers. They may specify such things as the number of directors and their terms of office.

Bylaws

Bylaws address association operations such as procedures for meetings and elections and specifying the general duties of the board.

Resolutions—Rules and Regulations

Board members adopt rules and regulations, and sometimes members have to approve them. Rules and regulations are recorded as board resolutions. Resolutions must be consistent with the declaration or proprietary lease, the bylaws and state law.

Association governing documents are almost always trumped by state law. But, when association documents conflict among themselves, the declaration or proprietary lease carries the greatest weight, followed by the bylaws and then the rules and regulations.

*Mark L. Wade,
CMCA, AMS, LSM, PCAM
Central Arizona Chapter President*

From the Editor...

Whether you call it Spring Cleaning or March Madness these articles should help with community association clutter and confusion.

*Kayte Comes, MBA, MNML,
CAI Executive Director,
on behalf of the CAI Central Arizona
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Chapter Executive Director's Letter

By Kayte Comes, Executive Director
CAI – Central Arizona Chapter

On behalf of the Chapter, it is our mission to provide advocacy and education to all members and the public at large. Anytime you can keep the madness down with education and positive information we are in support and encourage our membership to continue to work together to provide current legislative information, educational lunch and learns and support to managers and board members participating in CAI National educational programs. No one likes community association chaos in their lives and the best way to avoid it is through education.

Kayte Comes, MBA, MNML
Executive Director
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Next Issue's Theme:
Community Association Living: Share your Community Lifestyle.



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The Central Arizona Chapter proudly presents and welcomes our new members from December 2016, January and February 2017.

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 Luke Turco Turtle Creek HOA
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CAI estimates that the non-deductible portion of your dues is 17%. For specific guidelines concerning your particular tax situation, consult a tax professional. CAI's Federal ID number is 23-7392984. \$39 of annual membership dues is for your non-refundable subscription to *Common Ground*.



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DETAILS COMING SOON



March Madness: How to Keep the Madness Out of Your Community Association

By Lynn Krupnik, Esq., CCAL & Elaine Anghel, PCAM

Myth: The lowest bidder should be selected as the best choice for the job.

Fact: Sometimes, the lowest bidder can be a sign that the job wasn't fully evaluated, measured, or there is not a clear understanding of the requirements of the task at hand. While saving money for the association should be a goal when evaluating what vendor to select for the job, ensuring that the scope of work is fully understood on the front end will prevent issues down the road.

Myth: The Community Manager is responsible for the quality of work and the job completion that the vendor provides.

Fact: Community Managers are not typically trades experts for pool remodels, roof installations, asphalt replacement and the like. When necessary, an expert consultant should be considered by the association to ensure projects are completed pursuant to the specifications and the law.

Myth: Insurance requirements for vendors should be the same no matter the type of vendor.

Fact: Different types of vendors create different risks for the association and, therefore, different types of insurance may be appropriate. If the association is having a large construction project performed on-site (such as the construction of a new building or an addition to a building), builders risk insurance may be appropriate to cover the value of materials stored on-site and any half-completed building. If the association is contracting with a professional, such as a CPA, attorney, engineer, or architect (i.e. a vendor who

is performing professional services), ensuring the vendor has professional liability insurance is important. However, it is also important to understand that, unlike with a commercial general liability insurance policy, typically an association cannot be named as an additional insured on a professional liability insurance policy. Therefore, it is best to not assume a one-size-fits-all when it comes to insurance of vendors.

Myth: Associations are not liable for the acts of committee members unless such acts occur at an association-approved committee meeting or committee activity.

Fact: Committee members could create liability for an association if they represent themselves as committee members at other times, whether in person, by e-mail, or even through social media. Therefore, associations should consider adopting codes of conduct for committee members to make clear the association's expectations for all committee members and that any acts not in line with that code of conduct are outside of the scope of their role as committee members.

Lynn Krupnik is a partner with the law firm of Krupnik & Speas, PLLC. She has been representing community associations since 1997. Lynn is a member of the CAI College of Community Association Lawyers ("CCAL") and speaks and writes often on topics that affect community associations.

Elaine Anghel is the Senior Vice President of On-Site Management at AAM, LLC and has been in the homeowner association industry since 1993.

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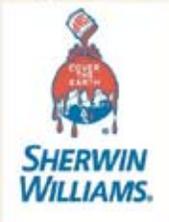
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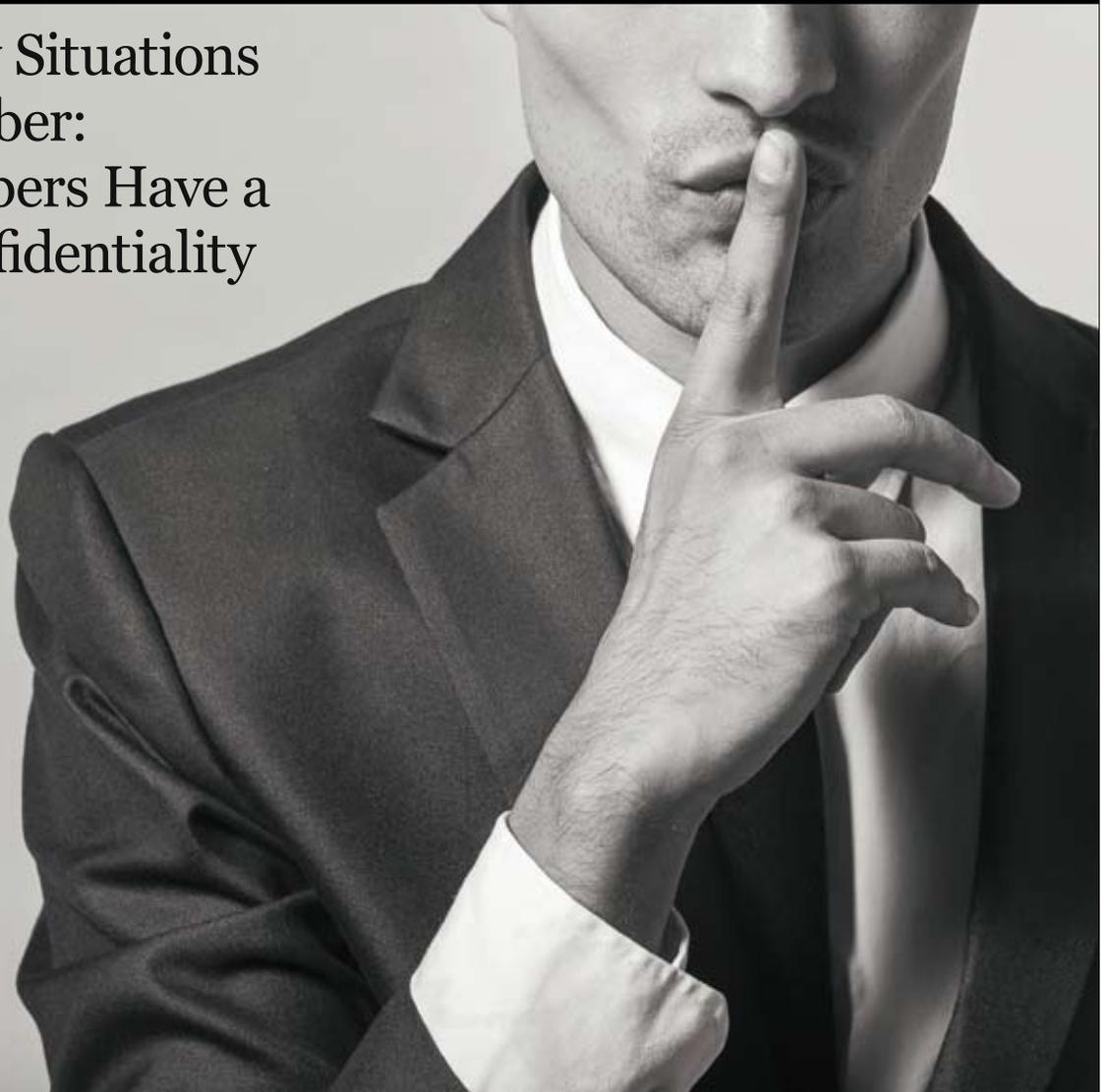
CAI
Central Arizona Chapter

2017 SPRING
NIGHT GOLF



Avoid Messy Situations and Remember: Board Members Have a Duty of Confidentiality

By Chad P. Miesen, Esq.



Directors of community associations are often involved in delicate discussions and provided with sensitive information throughout their tenure on a board of directors. Sometimes a director will share that information with others in the community under the belief that doing so furthers the goal of transparency and trust among the membership. While this may seem an admirable objective, disclosure of certain confidential information to those outside the Board and Management can result in the director breaching his or her fiduciary duties to the corporation.

In Arizona, and many other states, most community associations are organized as nonprofit corporations. Directors of nonprofit corporations owe certain fiduciary duties, one of which is a duty of loyalty to the corporation. Courts have held that rooted in that duty of loyalty is a duty of confidentiality. Essentially this means that a director of a community association is duty-bound to protect the confidential nature of certain information unless and until the Board, as a whole, authorizes disclosure to third parties (such as the membership at large or vendors) or the law otherwise requires it.

There are several tools available to better protect confidential information and efficiently handle requests. One such tool is the adoption of a director confidentiality policy that includes: (1) a clear explanation of the duty of confidentiality; (2) a description of what is considered confidential information; and (3) a description of the process for routing requests for such information. Sometimes this alone can help to avoid legally compromising situations by helping to educate the Board and membership on the topic. It also helps avoid pitfalls by having a clear and efficient communication plan in the event this issue comes up.

It is important to respect the confidential nature of certain information. Be sure to craft a director confidentiality policy that is thoughtful, practical, and consistent with the law.

Chad P. Miesen, Esq. is a Shareholder at Carpenter, Hazlewood, Delgado & Bolen, PLC and practices law with a focus in the areas of general counsel, civil litigation and bankruptcy for the firm's community association clients.



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Building Successful Vendor Relationships

By Bobbie Potts

Vendors strive to build key relationships with clients that are mutually beneficial. In return for services rendered, vendors strive to cover business expenses such as payroll, taxes, and materials, as well as earn a marginal profit to keep their business healthy and growing. As a landscape vendor I am always looking for ways to provide key services that are beneficial and affordable for our community managers and communities.

Some key points to remember in developing successful relationships with vendors can be associated with the acronym CLEAR. C is for Clarity, L is for Liberal, E is for Expectations, A is for Accountability, and R is for Relationships. Focusing on each of these points will help you select quality vendors who can partner with you in managing successful communities.

Clarity is one of the most important points in establishing successful relationships with vendors. I could couple that with another equally important C word – Communication. The lack of either could result in a bad experience for the community manager and vendor on any project or service. Clear written or verbal dialogue from the community manager helps the vendor know exactly how they need to bid a project or service. It also serves as a solid guideline once the proposal has been awarded. Clear, consistent communication from the beginning, creates a better success rate for the community and vendor.

Liberal is not just a word for politics. Having a liberal number of vendors helps community managers have access to a variety of experience levels and services that best fit the needs of the community. Not all vendors are the right fit for every situation or community. Having multiple vendors gives the community manager access to a variety of services and scenarios that their favorite vendor may not provide or may not be able to do as successfully as another vendor in that situation. Establishing many vendor relationships will allow you to more fully explore every available option for the communities that you manage.

Expectations that are realistic is another important point in establishing successful vendor relationships. Oftentimes people will expect something from a vendor that is unreasonable and not feasible. Working to establish clear expectations in advance of any vendor agreement allows you

to take full advantage of your vendor's knowledge of their industry as well as manage unrealistic expectations well in advance of any misunderstandings. This also establishes clear understandings between the vendor, community manager, and community board. When acceptable expectations are not followed by the vendor then it may be reasonable to find another vendor, however, if expectations are unreasonable then the probability of any quality vendor in that particular industry being successful is extremely unlikely.

Accountability allows communities as well as community managers a recourse when agreed upon expectations are not met. Accountability for unacceptable services can take on many forms such as receiving a discount on the price of the project, renegotiation of the terms of the contract, or in extreme cases, firing the vendor and lodging a formal grievance. Holding vendors accountable can become uncomfortable for those involved, however clear communication of realistic expectations through strong relationships with your vendors can help avoid these uncomfortable situations altogether.

Relationships take time and effort from both parties involved and both parties need to be willing to take the time to communicate clearly, and consistently. One sided communication does not benefit either party. Establishing relationships built on trust between vendors and community managers begins with communicating issues and responding quickly to items and questions that arise during the service or project.

Ultimately, everyone wants a successful outcome from the relationships and projects they invest in. As trite as it sounds, following the golden rule is still a great professional practice. Keep in mind, vendors are partners, and most vendors are working to win loyalty and secure future business. Vendors can contribute successfully to a project and can make a significant positive impact when they have **CLEAR** guidelines. These guidelines, when followed, can be key in managing any business, community or project effectively.

***Bobbie Potts** is the Marketing and Business Development Director for Desert Classic Landscaping. She has several landscape and tree certifications including a Master Gardener Certificate, Sustainable Landscape Management Certification, Arizona Certified Landscape Professional and is an ISA Certified Arborist #WE-11574A. Desert Classic Landscaping is a full-service landscape company that includes landscape maintenance, landscape construction, arbor care, and weed control services.*



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Important Considerations Concerning HOA Service Providers

WELCOME

By Augustus H. Shaw IV, Esq., CCAL and
Nicole D. Payne, Esq.

There are several issues an HOA must evaluate when it seeks to hire a service provider. One major issue is the employment status of the service provider, (i.e. whether the service provider is an “employee” of the HOA or an “independent contractor” of the HOA). It is critical that the HOA determine whether it wishes the service provider to be an employee or an independent contractor. This determination will require the HOA to perform certain tasks and responsibilities based on the decision.

According to Publication 15-A of the U.S. Internal Revenue Service, a service provider will be considered an employee of the HOA if the HOA can “control what will be done and how it will be done.” Thus, if the HOA plays an active role concerning the work the service provider will perform, the service provider may be considered an employee. Some determining factors as to whether the Association is playing an active role include: whether the HOA closely supervises the work of the service provider; whether the HOA requires the service provider to obtain the approval of the HOA concerning work assignments; whether the HOA trains the service provider to do the work required by the HOA; or whether the HOA provides a set schedule of working hours for the service provider.

If a service provider is considered an employee of the Association, the Association must engage in a number of tasks concerning said employee. Generally, if a service provider is an employee of the HOA, the HOA must: withhold income taxes; withhold and pay Social Security and Medicare taxes; pay Unemployment Tax on wages paid to an employee; and verify the legal residency status of the employee.

In regards to independent contractors, Publication 15-A of the U.S. Internal Revenue Service states that a service provider will be deemed an independent contractor of the HOA if the HOA controls or directs “the result of the work done by an independent contractor and not the means and methods of accomplishing the work.” What this means is that the HOA may determine the outcome of the work but may not determine how the work is performed. Some

examples of this are: the HOA instructs the landscaper to mow the grass but does not tell the landscaper how to mow the grass; the HOA instructs the painter to paint the clubhouse but does not actively supervise the painter while he paints; the HOA hires an attorney to prosecute a lawsuit but does not tell the attorney how to prosecute the lawsuit or what legal theories to advance.

If a service provider is an independent contractor of the HOA, the HOA only has to file and provide the independent contractor a 1099 Payment Evidence Form. The HOA does not generally have to withhold or pay any taxes on payments to independent contractors.

As can be seen above, it is advantageous for HOAs that their service providers be considered independent contractors and not employees of the HOA in certain instances. Independent contractor relationships do not require as much reporting to the IRS and other Governmental Agencies and thus benefit the HOA. Additionally, independent contractors bring less liability to an HOA.

Choosing a service provider on its face may seem simple and for the most part it is. HOAs, however, must keep in mind that there are issues that arise when an HOA decides to hire a service provider. Actively thinking about whether the service provider will be considered an employee or independent contract is crucial when entering into a relationship with a service provider.

Augustus H. Shaw is currently the managing member of Shaw & Lines, LLC. For more than 16 years, he has advised community associations, non-profit corporations, and other clients requiring general real estate, bankruptcy, and litigation representation. Mr. Shaw is a graduate of the University of Arizona and later received his Juris Doctor degree from the University of Arizona James E. Rogers College of Law. He is licensed to practice law before the State Supreme Court of the state of Arizona, the State Supreme Court of the state of Nebraska, the Unites States District Courts of Arizona and Nebraska, and the United States Tax Court.

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Hire the Best: How to Vet your Vendors

By Rebecca Herro

Your Community probably has an entire list of reputable contractors you use on a regular basis. You know them, they do good work and you trust them.

But what happens when you need to hire a contractor for those rarely done tasks, like wall painting or large-tree removal? How do you choose a contractor who you can trust? There are a few simple tasks to check off and precautions to consider that can help you make sure you get what you pay for.

Find a Contractor

The first step is an obvious one: find a contractor. But as with any service, how you find it can make all the difference. CAI's Professional Services Directory (directory.caionline.org) is a great resource. Word of mouth is another very good option; check with colleagues or community managers you trust to see who they have used in the past and if they have any recommendations.

If that initial search doesn't turn up anything, the internet is your next-best option. This can get slightly trickier. As you search, pay attention to websites. If a company doesn't have good information (such as the services offered) readily available on their site, it might be a first indication to look at other contractors. Also, not having a website at all should be another early red flag.

You can also check the Better Business Bureau during this step (bbb.org) or other review-listing sites to help give you a general idea of any issues others have had in the past with contractors. Multiple bad reviews or a poor rating may be another sign to look elsewhere.

Check their Licenses

Once you have a short list of contractors, the next step is making sure they are a registered contractor with the State of Arizona. This ensures that the contractor has the proper licenses and is bonded. The Registrar of Contractors website (www.azroc.gov) allows you to search for contractors by name, which will allow you to see their contractors' license status and bonding information. In addition,

it will also tell you the names of the people who can sign contracts on behalf of the company and what kind of work they're licensed to do.

If you have ongoing work agreements with outside contractors, it's also a good idea to double-check their license statuses on the ROC website at least once a year.

Talk to the Contractor

Next, get in contact with your potential contractor. Explain to them the work you'd like them to perform, ask them for their licenses and tell them about your liability insurance requirements. Reputable companies should be very forthcoming with this information and will be able to answer all of your questions. If there's any resistance to providing you information, that's another indicator that you may be better off working with a different contractor.

Get it in Writing

Before any work begins, get a written contract. Think of this step as your safety net; it sets clear expectations for everyone involved and helps to hold them accountable. Because your contract should protect you if something goes wrong, it really needs to be as detailed and specific as possible. Your contract should include details about the scope of work being performed (who's responsible for what, when they're going to do it and how), insurance requirements (including liability), indemnity and a firm and specific price. If there is a warranty or guarantee on the work or service, include any information about that in the contract as well.

Choosing a reputable contractor is really about common sense; these few basic precautions can really go a long way in helping your Community hire reputable vendors.

Rebecca Herro is Director of Development at DLC Resources, Inc. Since moving to Arizona in 2007, Rebecca has been involved with the Community Association Industry; first with a developer at a premier Community in the west valley and now with a Phoenix-based landscape company that specializes in the landscape management of large communities.



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Using a RFP to Achieve Uniform Bids



By Michael Frank

I LOVE fruit! Lots of vitamins, tastes great, refreshing! What's not to like? There is a great similarity to all fruit and our industry. No, I am not talking about the potential “fruitcake” people you may or may not be dealing with on a “day to day” basis! I am talking more specifically to the way your Communities many times receive their proposals. Specifically, in our industry, Civil (Paving, Drainage, Site Concrete and Utilities), “seal coat” is an overused general term! How many times have you heard, “Betty, can you please obtain us 3 “seal coat” bids for our roads? With apologies to any “Betty’s” out there reading this article right now, Betty promptly goes out to her vending Community and asks for each vendor to provide a proposal for a “seal coat”. Each vendor then does exactly what was requested, visits the site, develops a proposal and submits it to the Community. At the next Board meeting, Betty proudly submits the proposals for the “same” scope of work, “seal coating”. Only one problem, for the same road, Betty has received proposals of \$15,000, \$28,000, \$42,000, and \$125,000.00! All of the proposals say they are providing “seal coat”; however, they may not be the same type, same application rate, utilizing different products (even within the same manufacturer), and may have additional costs that may or may not be appropriate for the required scope of work! So, what is the right answer? Maybe none of them! Like fruit, “seal coat” addresses a wide variety of product types and ultimate outcomes with regard to wearing surface, physical appearance, and longevity. Seal coats are used for “preventative maintenance” for your roads. But not all may be appropriate for your specific situation. Some may be more than you need and some may be less than you need and in many situations, a seal coat simply isn't the right answer!

This is where a “request for proposal” (RFP) becomes so important! In order to eliminate the wide variety of “fruit”

you will receive in any bid solicitation process, you need to eliminate any “open ends” or “room for interpretation” that each vendor may have questions regarding or make assumptions on. In addition, by leaving it to the vendor to decide what is best may not be actually what is best or even needed. There are lots of great vendors in the industry; however, there are also vendors that are happy to sell you goods or services whether you need them or not. Another common mistake I see in my professional career is when a Manager asks their “preferred vendor” to “play consultant”, visit the property, make an assessment of what they would do, provide a proposal which in turn the name is removed and used as “bid specifications”. It would be my guess that most vendors do not want that kind of responsibility or liability associated with providing specifications that another vendor can rely on. This type of “solicitation” is not uncommon in all types of maintenance work (paint, landscape enhancements, seal coat, and more). The risk here is whether what one company feels is the right approach is actually the right approach AND what expectations your client has when the work is completed. I have had many occasions where a client has asked me to inspect a property as they feel that the work was not completed correctly. When I ask the client to see the RFP and bid specifications, they either don't have any OR they have used a “preferred” vendor's proposal. Many times, these don't have application rates or surface preparation requirements, tolerance levels or other specifics leaving an “open door” for bids to vary. Ultimately, too often, I am left to let the client know “you got what you paid for.”

A RFP provides specific detail with regard to construction or maintenance related specifications AND general conditions. General conditions are indirect costs or information related to the work that is not necessarily “the work.” For example, during the work, you would request that your vendor

supply a “porta john” for their employees to use while on property. That is a general condition. The type of insurance you require by your vendors is a general condition. Where they can store their equipment and products is a general condition. The rights of the client/owner related to accepting or rejecting bids is a general condition. I think you get the idea. Bottom line is all of these general conditions are important to the work and may have cost or may not be achievable by your prospective bidder (see insurance requirements). The specific detail or “technical specifications” includes all information related to the work you are requesting. In our industry, this may include surface preparation, product types, application rates, and acceptable tolerances, among other items. The key to a successful RFP is the amount of detail which is included therein. The more detail, the more information and the more competitive the bids. In addition, when evaluating the work, it provides the baseline for what expectations should be established for compliance with the specifications. Should questions arise by any prospective bidder, we release an “addendum” to the bid package which includes the question and the answer so that all bidders have the exact same information when formulating their proposals.

An RFP is not only a benefit to the client, it is a benefit to the contractor and they realize that all parties are playing on a “level playing field.” It would be my opinion that if you asked the vending Community, I am sure most would agree that by having this information, they don’t have to worry about losing out on a property as a result of another vendor proposing on something less than appropriate providing an unfair advantage to that vendor.

Bottom line, the RFP gets you, the client, “uniform fruit” (apples vs. apples), rather than the “fruit salad” that provides confusion and frustration when making an important decision on any Community’s expenditure.

Michael Frank is the President of Frank Civil Consulting, a pavement, drainage and infrastructure specialist in the industry, with almost 40 years’ experience.



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Insurance Coverage 101

By Mindy Martinez, CIRMS



When shopping for insurance, price should not be the deciding factor. It's important to meticulously weigh your options. If shopping for insurance stresses you out, don't worry, I'm here to educate you on important coverage to look for on your Director & Officer policy.

Did you know you can purchase a Director & Officer policy for \$200 in the insurance marketplace, with coverage limits of \$1 million and a \$1,000 deductible? Board members and managers ask, "Why would I buy a stand-alone policy for \$1,500 when I can add an endorsement to our Property & General Liability policy—adding Director & Officer coverage for approximately \$200?"

That's a great question. What is the difference? Both policies offer up to \$1 million in coverage with a \$1,000 deductible.

It is your fiduciary duty to secure insurance coverage as a board member; however, it can be difficult to make a decision when you don't understand coverages. That's why I've decided to compile a quick study guide. Here are a few important coverages to look for when comparing a Director & Officer Policy for \$200 to a \$1,500 policy in the Director & Officer marketplace.

Study Guide: Insurance 101

Claims Made v. Occurrence Form: Claims Made policies provide coverage only for claims made during the policy period, subject to the insured carrying continuous coverage. For example, let's say its 2015 and you are served a lawsuit

for a wrongful act that took place in 2008. You would file a claim on the current policy, because this is when the claim was made—not in 2008, when you knew nothing about an issue.

An Occurrence policy offers coverage during the policy period. An example of a coverage period would be Jan. 1, 2017 to Jan. 1, 2018. If a claim occurred on June 5, 2017, you would file the claim on this specific policy term. Unfortunately, Director & Officer claims can arise up to several years after the alleged wrongful act. In fact, some occurrence D & O policies specifically state that you can only file a claim up to one year after the policy expires. Your Director & Officer policy should be written on a Claims Made Form.

Retroactive Date: Claims Made policies can include Retroactive Dates that may further limit the range of claims covered. If a Retroactive Date is shown on the policy—and there's a claim made on a loss or wrongful act that took place before the Retroactive Date—it would not be covered. Some policies offer Full Past Acts with no Retroactive Date. If a Retroactive Date exists, make sure it's listed at least 10 years prior, or the date your association was taken over by the first Board of Directors.

Defense Costs – Inside or Outside the Limits of Liability: Defense Costs refer to the money your insurance company pays an attorney to defend the claim on your behalf. If Defense Costs are inside the limit of liability (\$1 million), you could potentially exhaust the limit in attorney's fees before the insurance company pays the claim. In other words, it's in your best interest to have Defense Costs outside the limits of liability.

Common Exclusions:

- Failure to Maintain Insurance
- Breach of Contract
- Discrimination
- Employment Practices Liability
- Willful Violation of Any Statute or Regulation

If your head is spinning by now, don't worry. Insurance can be notoriously tricky, and that's why I'm always here to help if you have questions. In closing, I'd like to leave you with some final tips as you're contemplating your next insurance moves.

- Review your policy and then ask yourself, are the exclusions worth the savings?
- Remember: Package D & O Liability is the type of insurance added by endorsement to the property and liability. It has many exclusions and provides bare minimum coverage.
- Stand-Alone D & O Liability should be a policy designed specifically for Community Associations. Many D&O policies cover non-profit corporations or for-profit corporations but are not written specifically for Community Associations. A Stand-Alone D & O should extend coverage to the board members, volunteers, committee members, Community Association managers, employees, and the association.

Now that you've taken this Insurance Coverage 101 crash course, I'm confident that you're ready to navigate the exciting world of insurance.

Mindy Martinez, CIC, CISR, DCAL, NVEBP, CIRMS an insurance broker covering Arizona & Nevada focusing on the insurance needs of Homeowner Associations/Common Interest Communities.

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Residential Fire & Water Disaster Tips

By Jenifer Kimbrell



Dealing with fire or water damage in your home or business can be distressing. If you or a resident is faced with such a disaster, the best thing to do is to call for professional help immediately. Experienced fire restoration and water restoration experts will work quickly to minimize the damage and begin the restoration process. Below are a few tips you can use or communicate to your residents or business owners to minimize damage and ensure your personal safety and others.

If your home has fire or smoke damage:

- Open doors and windows to circulate fresh air and diminish smoke odors.
- Throw out any open food containers. Smoke can permeate these and cause contamination.
- Vacuum soot and particles from carpet, drapery, and upholstery using a brush attachment.
- Prevent further soiling of the carpet by covering high-traffic areas with towels or sheets.
- If you have a forced air furnace, replace the filter as soon as possible.
- Cover air vents with damp cheesecloth to collect smoke residue and soot particles.
- Use a damp cloth to remove soot and residue from the leaves of house plants.
- Wipe smoke residues from countertops to avoid further damage and contamination.
- Clean chrome and porcelain fixtures in the kitchen and bath to prevent tarnishing or etching.

Important precautions to take when dealing with smoke and fire damage:

- Do not consume any food that has been affected by fire or smoke.
- Do not use electrical appliances that were affected by the fire. A malfunction could be very dangerous.
- Avoid contact with smoke damaged surfaces; soot on your hands can transfer to other areas and cause further damage.
- Don't try to clean furniture or carpets aside from a light brush vacuuming; deep cleaning should be done by a professional.

- Consult a smoke restoration expert before attempting to clean wallpapered or painted walls.
- Call experienced fire and smoke restoration professionals as soon as possible. They will be able to provide experienced help and advice on the best way to deal with fire and/or smoke damages within your home.

If your home has water or flood damage:

- Mop the affected area to remove as much of the remaining water as possible.
- Speed the drying process by opening doors and windows and circulating the air with fans.
- Use a dehumidifier if you have one.
- Use towels to blot dry your upholstery and prop furniture cushions up to speed drying.
- Elevate curtains by placing the end through a clothing hanger and suspending the hanger from the curtain rod.
- Place aluminum foil between wet carpet and furniture legs.
- Remove valuable items, books, and photographs to a dry room.
- Open closet doors and furniture drawers to expedite the drying process.

Important precautions to take when dealing with water damage:

- Never use electrical appliances in a room with standing water.
- Turn off electrical power to flooded areas.
- Never use an ordinary vacuum on wet carpet.
- Seek professional water damage restoration help as soon as possible to prevent further damage and harmful bacteria growth. Flood restoration experts will be able to advise you on how best to deal with the situation.

No matter what kind of damage your home or business has incurred, call a professional to assist by evaluating and mitigating damages. Experts provide experienced help and advice on the best way to deal with fire, smoke, and water damage.

Jenifer Kimbrell is a National Account Manager of Interstate Restoration, Tempe, Arizona, and a member of CAL, servicing distressed homeowners, commercial owners and managers get back to life and business after disasters on a national level.



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Should I Warranty My Asphalt

A Guide To Better Understanding Warranties In Construction And How They Can Affect Your Community

By David Boon

In recent years, I have often been asked how asphalt pavement maintenance warranties relate to homeowners associations. HOAs must be cautious and realize that it is critical to understand the different types of warranties that exist as well as what additional governmental protections are already in place to protect consumers before ever agreeing to pay for a warranty.

Warranty Examples

The standard one year “call back” warranty found in most standard contracts today is enforced and extended by the AZ Registrar of Contractors’ ability to impose corrective action orders within the first 2 years of a project’s completion. In addition, Arizona courts also recognize implied warranties, particularly that of good workmanship. Because these types of warranties allow for a reasonable time of discovery, they can offer protection for many years beyond the written contract.

Another warranty that may initially appear to benefit consumers, however, very often do little to protect owner’s interests are known as ‘vendor warranties.’ Vendor warranties cover a particular product that is manufactured and/or distributed by the company offering the warranty, often exclude certain types of problems or failures, are very limited in their scope, and can actually put obstacles in place making a consumer’s ability to collect on the warranty very difficult, if not impossible. These types of warranties may easily pose a trap for property managers or board members who are expecting a much higher level of protection.

As an example – recently there was a situation where a community manager expressed extreme dissatisfaction in regards to a vendor warranty they dealt with: Approximately three years prior, their community had agreed to have a contractor spray apply an asphalt emulsion product to their community streets. Despite the fact that the application was going to cost them nearly twice what other contractors had proposed with products that had proven track records of performance in Arizona and across the country, this product came with the promise of a single product being able to treat a myriad of different pavement conditions, and the best part? The proposal included a full, five year warranty!

The community went ahead and decided to move forward with this contract and had the product applied throughout their community. Their reasoning was simple – they figured the costs were justified by the peace of mind they gained through the knowledge that if any issues were to occur, they had that 5-year warranty period, so everything would be completely covered.

Recently, that same property manager requested that the contractor return to the project location to discuss concerns they were having about premature wear of the applied product. Upon discussion with the contractor about the warranty claim, two major points

of conflict quickly became evident. First, the warranty coverage was based on a percentage of the remaining product, and since there is no existing test that can provide that information today, they could not determine what that particular value was with any certainty. As a result, that portion of the claim simply came down to the owner’s versus the contractor’s opinion.

Second, what they had been told was a full five year warranty, was actually pro-rated. They soon discovered that the “no charge” portion of the warranty had expired after two years, which is the same time period determined by ROC guidelines. Lastly, because of the rating their streets received from the contractor and the amount of time that had passed since the application, it was determined that they would now only receive a 25% price reduction on a new application of the already overpriced product.

This trap is very easy to fall into, as many people associate the word “warranty” with the return policy of a big retail store. For instance, you buy a light fixture from Home Depot, and return it a couple months later in the original box with a receipt, and get the full purchase price back with no questions asked.

Unfortunately, vendor warranties do not work this way, and they are aggressively marketed for one primary reason – they are money makers for those folks selling them. The word “warranty” can have a reassuring affect on someone considering a big purchase, which in turn often causes someone to let their guard down and be less skeptical of the fine print on a contract. This, along with the fact that only a small percentage of vendor warranties are ever collected upon, makes them very valuable revenue streams.

Remember, the state of Arizona already has a variety of laws and statutes in place to protect consumers, and by using a licensed contractor, the state guarantees warranty obligations will be met. So, beware of vendor warranties that promise added value; they are often full of disclaimers, are a disguise for valuable revenue streams, and are designed to benefit those selling them, not the consumer.

Finally, the fiduciary responsibilities you are beholden to as a property manager or HOA board member include understanding what you are paying for and how it may affect your community in future years. By better understanding how warranties work, exactly what provisions are included in the contracts you sign, and some of the traps to avoid, you will be better able to serve your community.

***Dave Boon** is the General Manager and Owner of SealMaster in Arizona, which is a member of the nation’s largest network of pavement maintenance products and equipment manufacturers. He has over 16 years of experience in the asphalt maintenance industry, in addition to 10 years of general construction experience, and manages all of the day to day operations of SealMaster Arizona.*

Capital Improvement Project, Inadequate Amount of Reserve Funds...Now What?

By Manny San Miguel, MBA



Has your community been putting off a capital improvement project due to insufficient reserves? Is your HOA board fearful of depleting all of the community's reserve funds to pay for a capital project? Why not consider a HOA loan to pay for all, or some of the project costs?

Achieving capital improvement project goals and objectives can be very challenging, particularly when an association's reserve funds are limited. In many instances, communities are wasting a significant amount of time and money on repairs, essentially placing a "Band-Aid" on the problem rather than resolving the issue. Although this approach may provide a temporary solution, this is not the ideal method board members should consider. There are many various ways in which an association is able to fund capital improvement projects, therefore, board members should carefully analyze each option and determine the best approach while keeping the best interest of all community members in mind. Project funding options include increasing regular assessments, passing and collecting a special assessment, or utilizing one of these options in conjunction with a HOA loan.

As a corporation, homeowner associations may have the ability to obtain financing dependent upon their governing documents. When considering a HOA loan, board members are encouraged to start the process by contacting their HOA attorney. The HOA attorney will ensure the association's governing documents allow for financing options, provide feedback on resident votes that may be necessary to obtain a HOA loan, and prevent any other loan closing disruptions. A HOA loan is a specialized loan, making it very different from a commercial loan or home mortgage. Board members are encouraged to work with lenders that specialize in HOA banking and understand the loan structure of utilizing assessments as collateral. The most common questions/concerns from board members and homeowners regarding a HOA loan pertain to personal liability once the loan has been established. The loan agreement is between the bank and the HOA as a corporation, therefore the HOA is responsible for the loan, not the board or individual homeowners. Board members sign as corporate officers on behalf of the association. The bank does not place any type of lien on individual homes/units. Homeowners still have an obligation to pay their regular and/or special assessments directly to the homeowner association.

Many boards are taking advantage of today's historically low interest rates, helping to increase property values by completing capital improvement projects that otherwise would be delayed due to a lack of reserve funds. Additional advantages of obtaining a HOA loan include avoiding large lump sum special assessments, improvements are completed quickly creating instant curb appeal throughout the community, and the overall savings on time and money associated with a complete replacement project. Drawbacks of obtaining a HOA loan include a possible increase in regular and/or special assessments, interest and closing costs associated with the loan, and any additional costs incurred to seek legal advice and obtain approval from the membership.

HOA loan terms are generally 5-15 years, depending on the useful life of the project. HOA lenders will look at various aspects of the association during the loan underwriting and approval process. Areas of focus include; the size of the community, current and past cash flow, delinquencies, the current delinquency policy, a reserve study or capital project schedule, historical financial performance, and the overall stability of the association. When trying to obtain membership approval, it is imperative to build confidence amongst the community through leadership and transparency. The message to the homeowners should include properly identifying the extent of the problem, reviewing multiple project completion options, selecting and ensuring proper project oversight, and creating a loan payback plan that coincides with the best interest of the community. Assembling a team of industry experts to assist through the lending process is highly recommended. As with all projects, proper planning and communication is vital from start to finish.

***Manny San Miguel**, a native of Arizona, has worked in the HOA Banking industry for the past 14 years. Manny is a graduate of Grand Canyon University with a Master of Business Administration. During his 15 years with Mutual of Omaha Bank, he has held several positions including customer service manager along with his current role as Regional Account Executive for Arizona and New Mexico. Manny specializes in HOA banking, investments, and lending. When Manny is not helping enhance your communities needs he spends his spare time as a cycle instructor.*

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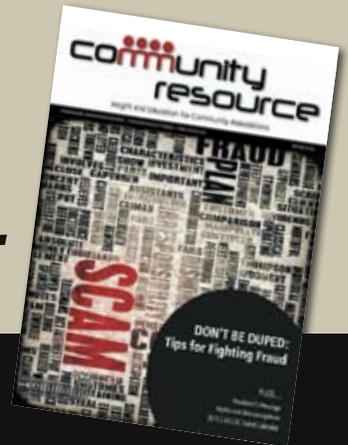
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Pamela Jo Alvarez
Florence Gardens

Tom Anglin
Ancor Property Professionals, Inc.

Bret Barnes
Arizona Community Management Services, LLC

Jason G. Carter
Vision Community Management

Maria Clark
The Dobson Association

Tracy Connolly
Arizona Community Management Services, LLC

Alexander Derario
Vision Community Management

Douglas Egan
The Mariposa Group, LLC

Mody Gruenberg-Friedman
Mirabel Community Association, Inc.

Stephanie Kaye Haholy
Recreation Centers of Sun City, Inc.

Chris Herring
Sun City

Marcia Johnson
Recreation Centers of Sun City, Inc.

Trevor William Jones
Golden Valley Property Management

Carol A. Jones
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Sonja Kay McKiness Perez
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Stefani J Mercado
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Shelby Darnelle Moncada
Golden Valley Property Management

Matthew Renfro
Vision Community Management

Taylor Richardson
Vision Community Management

Erin Scott
Vision Community Management

Kymerlee Jane Stutzman
Sun City Grand Community Association Management

Adriana Van Os-Gries
HOAMCO

Jodi Webster
Tru-Star Management Solutions, LLC

Matthew Fields Winter
Ancor Property Professionals, Inc.

2017 New Chapter Board Members



TONI RUDOLPH

Toni Rudolph is Vice President and Financial Service Manager at First Citizens Bank. Throughout Toni's career in banking, she has worked with small businesses and fortune 100 companies. Toni specializes in assisting Property Management and Home Owners Associations with their treasury and cash management needs. She enjoys consulting with them to help save time and money. Toni has 30 + years' experience in banking; it's been her lifelong career. When Toni takes off her banking hat, she's known to be in the kitchen cooking, playing with her 2 Rescue dogs or enjoying friends playing a game of trivia.



REBECCA HERRO

Rebecca Herro is Director of Development at DLC Resources, Inc. Since moving to Arizona in 2007, Rebecca has been involved with the Community Association Industry; first with a developer at a premier Community in the west valley and now with a Phoenix-based landscape company that specializes in the landscape management of large communities. She's had the opportunity to work closely on the management side and vendor side of an Association and has a unique understanding of the dynamics of managing and working in a Community Association. When she's not at work, Rebecca enjoys exploring unique eats around the Valley and spending time with her husband and 3 kids.



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Diamond Corner

The CAI Central Arizona Chapter wants to thank our Diamond Sponsors, whose contributions assist us in preserving, protecting, and enhancing the industry. Our Diamond Sponsors contribute at the top level to our organization and are recognized in each issue by providing helpful information to our members.

BURGSIMPSON

Spring cleaning at your association may reveal some unpleasant surprises – such as leaks, cracks, or other problems related to defective construction. Don't let your homeowners bear the cost of cleaning up after the builder. Burg Simpson can arrange for a free inspection by a construction professional to assess any potential problems, and we can work with the builder to facilitate repairs or get money to make repairs.

Carpenter Hazlewood, Delgado & Bolen, PLC

If your board meetings are getting a little long or out of control, think about adopting a Meeting Code of Conduct resolution. This resolution could seek written questions at the beginning of the meeting, set time limits for board and member comment, outline the structure for the meeting, set discussion protocol, and establish steps the board can take to address unprofessional and unruly directors or members. Remember, it is the board's meeting, and it may be the only opportunity the board has to conduct association business.

DLC Resources

How do you know if the contractor you're looking to hire is reputable? Do they have the right licenses? How do you protect your Community from getting burned by a contractor? Read DLC's article "Hire the Best: How to Vet your Vendors" in this issue for tips and advice.

Maxwell & Morgan, PC

Avoiding Collection Accounting Madness:

Oftentimes, despite an attorney's best efforts, a court will arbitrarily decide to refuse to award ongoing assessments in a past-due assessment money judgment against a current homeowner. When this is the case, all payments received should be applied to the judgment balance until the judgment is paid in full, unless a payment is specifically earmarked by the homeowner for different purpose. Once the judgment balance has been paid in full, the judgment must be satisfied and a new collection action must be undertaken against the homeowner for all amounts

due from the date the initial judgment was awarded forward to today. If payments received were applied on the association's ledger on the date they were received, the attorney and the association's accounting department will have to spend significant time figuring out how to zero out the ledger at the date of the previous judgment, which will require the re-allocation of payments back to the date of the judgment. This process is association accounting madness at its worst! Fortunately, the madness can be easily averted by some communication between attorneys and managers on the front end. To avoid this madness, an attorney should notify the association once a judgment is signed by the court if ongoing assessments were not awarded and a new numerical account and ledger should be created by the association (i.e. 4421-01 would become 4421-02). All ongoing assessments, fines, late charges and other amounts from the judgment date forward should be tracked on the new account, while all payments received should be applied to the original account. By doing so, once the judgment balance is paid in full, there is a clean association ledger for all post-judgment amounts, ready for collection without any unnecessary headache to the association or the attorney.

SealMaster

March madness is here and the spring brings in the warm weather. This is an ideal time to schedule your upcoming asphalt maintenance. Not only is the weather ideal for Sealcoating and crack filling but also many of the preferred contractors' schedules fill up quickly. So, avoid the madness and get your projects scheduled early!

V-F LAW

Madness always seems to ensue in communities governed by a board of directors that is not familiar with or does not follow its governing documents. Madness is also created when those governing documents contain provisions that are outdated or contrary to Arizona law. Surviving this madness takes a concerted team effort between the board, its managing agent and the Association's attorney to ensure compliance with the governing documents and to make any changes to the documents that may be necessary to meet the current needs of the community.

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2017 CAI-CAC Event Calendar

MARCH

- 14 CAI – Central Arizona Educational Lunch
2017 Priceless Legal Advice Panel
Location: Hilton Phoenix Airport
2435 S. 47th St.
Phoenix, AZ
- 23-25 **PMDP Course M-100 Phoenix, AZ**
Location: Hilton Phoenix Airport
2435 S. 47th St.
Phoenix, AZ
- 31 CAI – Central Arizona Chapter Tradeshow -
Life's a Beach!
Location: Rawhide Event Center
5700 W. North Loop Rd
Chandler, AZ
Sponsor: Arizona Consolidated Services

APRIL

- 13 Managers Roundtable
Location: Dobson Ranch
Sponsor: Interstate Restoration
- 28 Night Golf at TopGolf
Location: TopGolf
Scottsdale, AZ
Sponsor: Sherwin Williams

MAY

- 3-6 **CAI – Annual Conference & Exposition**
Location: Las Vegas, NV
- 18 New Member Breakfast
Location: TBD
Sponsor: TBD

JUNE

- 8-9 **PMDP Course M-370 Phoenix, AZ**
Location: Hilton Phoenix Airport
2435 S. 47th St.
Phoenix, AZ
- 13 CAI – Central Arizona Educational Lunch
2017 Legislative Update
Location: Hilton Phoenix Airport
2435 S. 47th St.
Phoenix, AZ
- 13 Chapter Board Meeting
Location: Hilton Phoenix Airport
2435 S. 47th St.
Phoenix, AZ
- 23 Casino Night
Location: Scottsdale Arts – Atrium
Scottsdale, AZ
Sponsor: TBD

For more information, visit the chapter website at www.cai-az.org or call the office at 602-388-1159. Items in red are CAI National events.

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