



# COMMUNITY RESOURCE

INSIGHT & EDUCATION FOR COMMUNITY ASSOCIATIONS

FEBRUARY 2019

*This Issue*

MESSAGE FROM THE DIRECTOR

CONGRATULATIONS CORNER

# LOVE YOUR COMMUNITY



HOA Legal Q&A

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## UPCOMING EVENTS

CAI National Events in yellow

### MARCH

15

**CAI -Central Arizona Educational Lunch  
 CANSel Out Hunger Event**

Location: PMG Upper Parking Structure

FEBRUARY 2019



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# Message

## FROM THE DIRECTOR

**BY KAYTE COMES** | EXECUTIVE DIRECTOR

CAI - Central Arizona Chapter

The year is off to a great start. We have changed up our calendar to try new ideas and moved some events around to see if it will help create more participation. At each event we will be surveying and asking your thoughts. At the end of the year the chapter board will evaluate your comments which will guide the chapter for the future. Your participation in these surveys will be critical and the chapter looks forward to your comments.

Please review our calendar on our website and download our App. It has everything you would need if you are out in the field. Service Provider phone numbers and emails are available with a click to get a hold of someone quickly. We have also launched the 2019 hard copy Membership Directory. Please pick one up next time you are at an event.

Keep in mind that our membership has grown over 10% this last year and certain events are now filling up faster than before. An example of that is the tradeshow April 26th at Rawhide. We sent the email blast out February 1st and within two weeks we were over half full, with a goal of 130 booths. Don't wait and miss out on the fun and the opportunity make new relationships. The theme this year is "Game Night".

All the Best,

*Kayte Comes*

CAI CENTRAL ARIZONA EXECUTIVE DIRECTOR  
602-388-1159 | [kayte@cai-az.org](mailto:kayte@cai-az.org)



“  
THE YEAR  
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A **GREAT**  
START.”

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# Congratulations CORNER

NOVEMBER 1, 2018 TO FEBRUARY 28, 2019

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Mr. Kevin Hearty  
CCMC

## CMCA Certification

Ms. Gloria Brenna Jane

## PCAM Designation

Mr. Richard Orduno  
Associa Arizona-Scottsdale



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# CANSTRUCTION COMPETITION

MARCH 15, 2019



## Priceless Legal Panel

1. **What is “Reasonable Accommodation”?**
2. **What is the difference between FHA v. ADA?**
3. **What about service animals v. emotional support animals?**

By John Bolen, Esq., CCAL  
Goodman Law Group

Federal and Arizona Fair Housing Laws require homeowners associations reasonably engage with homeowners to determine if a reasonable modification to the premises or an accommodation to its existing practices is necessary and grant such modifications or accommodations if they are reasonably related to the disability. Failure to grant such modifications or accommodations when requested could result in additional liability or costly litigation. While the FHA prohibits discrimination based on race, color, religion, sex, national origin, familial status and disability, the ADA only prohibits discrimination for disabled individuals.

The Americans with Disabilities Act (“ADA”) defines the term service animal as, dogs that are individually trained to do work or perform tasks for people with disabilities. The ADA allows for service animals to go anywhere with their person. One cannot demand proof that the animal has been certified, trained or licensed, and they may only be legally asked two questions: “Do you have a disability that requires a service dog?” and “What work or task has the animal been trained to perform?”

Emotional support animals are not trained to perform specific tasks but their presence brings a sense of calmness and security to people with anxiety, depression or other challenges. Unlike service animals, emotional support animals cannot go everywhere with their person. It’s up to the individual establishment as to whether they’ll allow them. The exceptions are housing and air travel. Federal law requires landlords to allow tenants to have emotional support animals, however they can ask for a letter from a medical professional.

If an association receives any type of request from a homeowner or resident on the basis of a disability, we encourage you to discuss with counsel before making a determination on the request.

### **How can Associations avoid disputes with homeowners or vendors and avoid the expense of litigation?**

By Mark Holmgren, Esq.  
Goodman Law Group

Disputes are usually avoided by helping the association’s board members see the big picture and helping them handle a disagreements creatively and with flexibility. Parties can usually find creative compromises to resolve a problem before it reaches the point of litigation.

The association’s attorney can help find those solutions where a board may feel afraid of setting precedent or making a difficult or politically unpopular decision. Often, the problem is an unreasonable homeowner who is completely inflexible or simply wrong. Under such circumstances, it can be beneficial to participate in mediation with a professional mediator, usually a retired judge. That judge can help the homeowner see the problem with his legal position and guide the parties toward an amicable solution. I was recently able to resolve a dispute between an owner and an association through this method.

By paying the mediator \$437.50, the association resolved a claim for over \$10,000 in just a couple of hours with minimal expenditure of attorneys’ fees and minimal stress. When faced with a conflict with a homeowner, associations should contact their attorneys as soon as possible to help them navigate the process and resolve it as quickly and inexpensively as possible.

### **Does your Association and the board have a duty to investigate and bring appropriate claims for defects?**

By Ritchie Lipson, Esq.  
Kasdan LippSmith Weber Turner LLP

The Maryland Court of Special Appeals recently issued an opinion in *Greenstein v. Council of Unit Owners of Avalon Court Six Condominium, Inc.* finding that an association can be sued by its unit owner

members if it fails to take timely legal action against a developer for defects.

In the case of first impression concerning duties of board members when confronted with construction issues within the common elements of a condominium, the court held that the board has a duty to initiate litigation against the developer for construction defects, and its failure to do so within the statute of limitations can result in liability to the individual owners.

The court held, “The duty to maintain, repair and replace the common elements creates a concomitant obligation on the part of the association to pursue recovery from the developer on behalf of the unit owners for damage to the common elements caused by the developers negligence, breach of contract or violation of any applicable law”

In another recent South Carolina Court of Appeals decision in *Fisher v. Shipyard Village of Council of Co-Owners, Inc.*, the court held the Board has a duty to investigate causes of damage to the common elements and to pursue all responsible parties for the damage.

In *Fisher*, many buildings in the condominium leaked around windows and balconies, and repairs were attempted. When the repairs failed many of the unit owners sued.

The court held that the Association and the board has a duty to thoroughly investigate the cause of the leaks, and bring appropriate claims for the defects, but also held that there is a presumption that the board acts in good faith.

In Arizona it is clearly established that an Association owes a duty to of reasonable care to maintain the common area in a safe manner and protect owners, tenants and invitees, just like a landlord. It is not much of a leap to envision an Arizona court ruling similar to Maryland or South Carolina. The bottom line is: (1) conduct regular inspections by an independent 3rd party professional; (2) bring appropriate claims against the developer and general contractor for defects before the statute of limitations and repose expires (8 years from substantial completion).

## What hot topics are associations likely to see in proposed legislation or case law in the near future?

By Lynn Krupnik, Esq., CCAL  
Krupnik & Speas

Short-term rentals have become a very hot topic. The change in Arizona law prohibiting cities from imposing a minimum lease term has caused a significant increase in the number of short-term rentals. This increase has caused new and different problems. These new problems are creating proposed legislation. Additionally, many associations are amending their declarations to impose a minimum lease term based on the change in the law. Such amendments are likely to cause legal challenges by owners who bought their properties as short-term rentals and now are unable to use their properties for that purpose.

Another area of continuing change relates to what is considered a record of the association. With the advance of technology and how associations keep records, this will likely be a constantly evolving field.

CAI is facing significant challenges at the Arizona legislature this year, with numerous proposed bills that would negatively impact how associations operate. Therefore, we need support from all of CAI's members to help us defeat legislation that is not in the best interest of associations or their members.

## What can we do about the influx of short term vacation rentals?

By Brian Morgan, Esq., CCAL  
Maxwell & Morgan

Answer: The law changed a few years ago requiring any restrictions against short term rentals to be specifically spelled out in the CC&Rs. Prior to such change, so long as the CC&Rs granted rule making authority, the rules could be used to minimize the impact of short term rentals in a community. Even more recently the law changed yet again to prohibit municipalities from enforcing time limitations on rentals.

Communities that did not have prohibitions in their CC&Rs regarding short term rentals used to be able to rely on "violation of law" provisions in their CC&Rs to eliminate short term rentals so long as the community was in a municipality that limited short term rentals. At this point the best option for reducing or eliminating short term rentals is to amend your CC&Rs.

Alternatively, boards should focus on the negative impact of the short term rentals in the community. For example, all residents must comply with parking restrictions, nuisance provisions, noise limitations, trash and maintenance obligations, use of community facilities including pools, etc. If the short term renters are in violation of any of these types of provisions then such violations should be pursued against the owner. Repeat offenses and accumulating fines for similar repeat violations may ultimately incentivize an owner to maintain better control over the renters.

## Can a Board of Directors ban a board member from attending executive session meetings?

By Augustus Shaw, IV, Esq., CCAL  
Shaw & Lines

Pursuant to the ruling in *McNally v. Sun Lakes Homeowners Ass'n #1, Inc.*, 241 Ariz. 1, 382 P.3d 1216, 749 (Ariz. App., 2016), Board Members may not be excluded from Board Meetings, even executive session meetings where their bad conduct or potential legal action will be discussed, unless the Board Member voluntarily agrees to not attend or the Association obtains a court order requiring the Board Members to not attend.

## What can an Association do to address ridesharing electric scooters and bikes from littering their common areas?

By Chandler Travis, Esq.  
The Travis Law Firm

First, these ridesharing companies are typically required to maintain and keep these electric scooters and bikes in certain

locations by the municipality. These electric scooters and bikes are equipped with GPS for these companies to locate them. These electric scooters and bikes which are being parked/left on Association's property pose a difficult enforcement task for boards and community managers. In nearly every instance, the Association will not be able to identify the rider of the electric scooter or bike who parked it, or, if the rider is identified, the rider may not be an owner or resident of the Association.

For condominiums, the Board should instruct its manager to notify the company immediately when an electric scooter or bike is noted to be in the Association's property. Further, the manager may consider removing this electric scooter bike from the Association's common elements and placing it in a safe, public right-of-way location.

For planned communities, in addition to having the manager notify the electric scooter or bike company, the Association should provide the contact information for these electric scooter and bike companies to owners and ask the owners to call the company when these electric bikes and scooters are observed being left within the community.

For gated planned communities, the Association's Board could adopt a rule prohibiting the use of these electric bikes and scooters within the gated community and instruct the manager to remove these electric bikes and scooters that are found within the gated community to a safe location outside of it.

In all communities, if residents and owners are using these rideshare electric scooters and bikes, the Association may consider adopting a rule where such bikes and scooters may be parked in the Association.

As technology continues to evolve, Associations will continue to be facing new issues, which will require thoughtful responses and potentially new rules.

*Continued Next Page*

**An owner in the community, claiming he has a disability, wants the Association to remove rocks from the common elements (or common area) and install a pathway with pavers to give him easier access to the parking lot. What is the Association required to do?**

By Quinten Cupps, Esq.  
VF Law

My first response would be that the Association and its management team need to consult with the Association's counsel. Whenever the Association is faced with a potential Fair Housing issue, it has to tread carefully. As for this particular example, it is likely that this owner's request will be considered a request for a reasonable modification under the Fair Housing Act. For Associations, a reasonable modification typically involves a request to change or alter property that is owned or maintained by the Association for use by the person with the disability. In this case, the owner is asking that rocks be removed from the common elements (or common area) and that a pathway with pavers be installed to give easier access to the parking lot.

We will assume, for purposes of this answer, that this particular owner is disabled as defined in the Fair Housing Act and that the owner's disability has been confirmed by a medical provider. When someone with a disability makes a request for a reasonable modification, the Association will likely have to allow the request if it is necessary and reasonable. The request is necessary if there is a nexus (connection) between the request being made and the disability. In this case, if the disability is such that a pathway will make it easier for this owner to access the parking lot, then it will likely be determined that it is a necessary request. A request will be reasonable so long as it does not impose an undue financial and administrative burden on the Association or does not fundamentally alter the nature of the Association. This analysis should be done with the Association's counsel and is very fact specific.

With that said, there is an important distinction to be made between a reasonable modification and a reasonable accommodation. When an owner makes a request to modify common area or common elements, the owner will be financially responsible for the changes. In other words, the owner will have to pay to have the modifications made, such as installing a pathway with pavers over the common elements or common area. Once the modification has been installed, however, the Association will be obligated to maintain it going forward, assuming it is located in an area that the Association already maintains.

When the owner moves out of the community, the Association cannot require the owner to remove the modification.

With any Fair Housing request, it is important for the Association and its management team to proceed with caution. Keep detailed notes and records and consult the Association's counsel before any decisions are made in response to such a request.



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BY CLINT GOODMAN, Esq. | GOODMAN LAW GROUP

# YOUR COMMUNITY





# Knock Knock.

“May I borrow a cup of sugar.”

“Would you like to buy some Girl Scout Cookies.”

“Hi, I’m here to collect for your Arizona Republic subscription.”

Those simple interactions with our neighbors have faded from our conversations. Groceries are delivered by ordering online. It’s no longer permitted for the Scouts to sell door-to-door. If you read the daily newspaper, it’s likely you read it on your smartphone. The sense of connectedness with our community, through shared experiences is almost lost. However, a new spirit is arising in the Valley in the form of Little Free Library. It “is a nonprofit organization that inspires a love of reading, builds community, and sparks creativity by fostering neighborhood book exchanges around the world.”

<https://littlefreelibrary.org>.

There are hundreds in Arizona, from as far north as the Navajo Nation, to Yuma, Nogales, and spread throughout Phoenix, Scottsdale, and Tucson. In 2017, Little Free Library awarded Tempe as a City of Distinction. Tempe offered a rebate program and some City Council members sponsor the costs to build and install them. I’m amazed at how creative the stewards have been in decorating their libraries. Some are quite simple and blend in with their neighborhood architecture and style. Most are brightly colored to identify them. My favorites include one that looks like an English telephone booth, and one that looks like a traditional school bus.

Stewards, as the homeowners are called, agree to maintain the little libraries. They volunteer to add books and to maintain the tiny structures. The benefits are many. People who might not have access to public libraries can exchange books in their neighborhood. People with too many books who might be decluttering or downsizing can donate their books. Children may get to keep a book for the very first time. Local authors in Scottsdale often donate copies of their books. It’s a way to meet your neighbors. A dad pushing a stroller may stop to borrow a book at the same time as a neighbor out walking their dog. It increases literacy. Books broaden one’s horizons. My neighborhood seems friendlier now that we have a library. We talk to each other. We share relevant information. We might even loan someone a cup of sugar. Over the holiday season, we posted a message about a package thief on our community page, which was originally founded because we had a library.

What concerns should you have before you build your own library? Many states and municipalities have zoning laws that prohibit detached structures which could be construed to mean no tiny libraries. In those instance, one might have to petition the city council for a variance, or an exception to the statute. What should you do if you are a director of your Homeowner Association and want to maintain a certain aesthetic for your community? Be proactive! Amend your Covenants, Conditions, and Restrictions (CC&Rs) and set standards for size, color, and location. Lastly, but certainly not least important, “call before you dig”. See [azcc.gov](http://azcc.gov) for more information. You don’t want to rupture a pipe, or a gas line, or disrupt the neighborhood’s internet connectivity.

There is a value to having community spirit. Connecting to our community and engaging in activities where we can share values, adds to our overall well-being.

*Clint Goodman, Esq. is the founding attorney of Goodman Law Group, a multi-state law firm devoted to servicing condominiums and HOAs. Clint volunteers much of his time educating managers and volunteer directors serving on their boards. Clint is a family man who loves the outdoors. If he is not working, chances are he is either with his family or climbing one of the world’s tallest mountains.*

# T.N.R. IS F.U.N.

## FOR COMMUNITY ASSOCIATIONS!

Central Arizona has a cat problem.



BY LYDIA PEIRCE LINSMEIER, Esq. | PARTNER  
Carpenter Hazlewood Delgado & Bolden

There are approximately 250,000 feral cats living in Maricopa County due to a continuous stream of abandoned and stray unsterilized pets dumped into neighborhoods. Community managers and community association attorneys dread feral cat complaints because there are rarely good solutions for the humans or the animals.

However, some of my favorite community associations here in the Valley have transformed a potentially tragic situation into a community-wide volunteer program that brings the residents together to make a positive change – and have some fun! Associations with TNR programs here in the Valley range from huge master-planned communities to small condominiums, but the basic requirements remain the same.

So, how does a community association turn yowls into cheers?

**TNR: Trap, Neuter, and Release.**  
Maricopa County Animal Care and Control

(“MCACC”) studied feral cat control for twenty years, and finally decided that TNR was the best method for controlling feral colonies. On September 18, 2002, the Maricopa County Board of Supervisors passed a resolution that stated TNR is, “the officially approved means of solving feral cat problems in Maricopa County.” We know that TNR works here in Maricopa County, and is especially effective in a community association setting.

What secrets do successful associations use to start a TNR program that will become a point of pride?

### Reach out to a local TNR nonprofit.

There are multiple nonprofit organizations here in Maricopa County ready to assist community associations with TNR programs, including the Animal Defense League of Arizona. A successful TNR program pairs the association with a local nonprofit that is able to provide the necessary resources and guidance.

### A few suggestions are below to help your association get started:

**Animal Defense League of Arizona**  
(602) 265-7729 or [somanycats@adlaz.org](mailto:somanycats@adlaz.org)

**Altered Tails AzCATs**  
(602) 216-1160 or [info@alteredtails.org](mailto:info@alteredtails.org)

The above resources will help your community association with TNR logistics and locating reduced-cost spay and neuter services.

### Look for the helpers.

If your community has feral cats, you most likely already have residents who feed the cats or who are very vocal about protecting the cats. Turn these residents into an asset for your community and put them to work! Successful associations usually form a TNR club or group that reports to the Board of Directors and has a small allocation of association funds. A dedicated volunteer corps will help the community association

There are approximately **250,000** feral cats living in Maricopa County due to a continuous stream of abandoned and stray unsterilized pets dumped into neighborhoods.



reduce its expenses and keep the TNR program on track.

Having a well-managed TNR program in place also reassures all residents that the feral cat situation is under control. Not every resident is going to be happy about the TNR program, but having a recognized solution in place may help reduce potential animal cruelty and bad publicity for the association. Having a TNR program in place makes a powerful public statement regarding your association's core values and volunteer spirit. Residents do not need to like cats to recognize feral colony control is a practice that benefits both their own community and Maricopa County as a whole.

**Draft some rules.**

Successful TNR programs have rules or a policy in place to guide volunteer behavior and limit potential liability for the community association. For example, TNR involves food being placed out for the cats by a designated colony caretaker. The purpose of the food is to allow the caretaker to monitor the colony for sick or new animals that require intervention. When other residents leave food out for their own cats

or the feral cats, the colony no longer needs to seek food from the caretaker. Therefore, good TNR rules include a prohibition on any resident leaving kibble or other food outdoors unattended.

Keep in mind that most people will not allow an animal to starve or be sick. When a community association attempts to mandate a blanket prohibition against feeding feral cats, those rules will almost always fail. Do not accidentally mandate cruelty in your association – TNR is a nationally recognized method of humane feral colony control.

**Have some fun!**

TNR is a great opportunity for your association to show off! Successful community associations provide regular TNR updates to the residents and praise the TNR volunteers for their ongoing service to the community. A well-run TNR program can be the foundation for other animal-related events the entire community can enjoy, including low cost vaccination clinics. Community associations with a successful TNR program are demonstrating pride and a commitment to quality of life for both the animal and human residents.



A well-run TNR program can be the foundation for other animal related events the entire community can enjoy.



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