

Community Trends[®]

July 2017

BUDGETING & RESERVES

In This Issue

- Association Wins Big in Developer Consumer Fraud Case
- Do One Thing Better — Pool Safety
- Should We Save for Siding?
- Have You Read Your Brokerage Statements Lately?

....and more



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JULY, 2017

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**"Times are hard, but we'll all survive.
I just gotta learn to economize."**

Ray Davies – "Low Budget"

When I first heard the topic of this month's *Community Trends*®, I immediately thought of the Kinks song "Low Budget." It's a great satirical song about fitting more into less, which unfortunately is what some of our communities are faced with due to high delinquencies, abandoned units and budgets that are artificially low to be popular with the neighbors. All of that may sound harsh, but it is the reality for many associations.

Where I see most associations tightening the proverbial belt, is with funding the reserve accounts for future replacements. The song says "They're a size twenty-eight, but I take thirty-four!" I equate that to the associations contributing the bare minimum of what the reserve study recommends knowing that they need more than that. But you know, I get it. How do you put money aside for items today that are in the future and at the same time keep the lights on?

One way is to create a "real life budget" or a budget that covers all the contracts, operating and reserve expenses like you have all the money you need to do it. Once you see what that monthly maintenance fee dollar is, then look to where you may be able to economize. There are items that are needs and those that are wants, but the bottom line is, will you be successful in collecting the funds that are needed? What about the facts listed above? High delinquencies, abandoned units and already low budgets have to be factored into the equation. Look to your audit and speak with your collections attorney on what that realistic number is. You may need to put the association on a plan, one that keeps the lights on and systematically funds the reserve account. It may mean a one time special assessment or a yearly special assessment. The bottom line

is, this is your investment, the maintenance of your property is paramount to keeping your investment in good shape.

How did I get from a really fun song to sounding so dire? Because we face this every day as managers. Despite the recommendations of the reserve specialists and the auditors, boards are still short-sighted. Not their fault, it's the sign of the times. They are facing the same issues with their own personal finances, as are we.

**"How do you put money aside
for items today that are in the
future and at the same time
keep the lights on? "**

Another idea is to use your vendors wisely. Instead of doing one or two work orders, research the maintenance needs of the community and make it a project, economy of scale may make this maintenance work less costly.

For those associations who are facing high delinquencies and abandoned units, use all of the legal avenues available to get owners on payment plans, rent levies and rent receiverships. It may be a cost up front, but in the end, you will have money coming in.

The last budgetary item that we miss is budgeting our time effectively. Balance your work and personal life and enjoy the ride!! (Learned that from an excellent keynote speaker at the CAI National Conference this year). We only have one go of this life, let's make it the best we can.

Peace and Love,
Denise



LOOKING AHEAD

LARRY THOMAS, PCAM | CAI-NJ CHAPTER EXECUTIVE DIRECTOR

Financial Management vs. Financial Leadership

It is very important for any non-profit to understand the difference between financial management and financial leadership. The preliminary task of collecting, formatting and distributing an association's financial data is financial management. Taking this information and organizing it to assure that your organization is successful, responsible and sustainable is financial leadership. Now is the time for boards and their leadership teams to start next year's budget process. The board and the management team are the responsible parties to make sure that an accurate and realistic budget is developed. Very often, associations realize shortfalls due to inadequately allotting sufficient time and efforts to create a "true to life" annual budget. A non-profit's budget should mirror the association's annual plan (major events, non-capital repairs/ additions, staff changes). This in turn, will dictate your change in cash flows and help you plan effectively for the months where your variable expenses may occur.

A review of your community's variable expenses should be a priority during your team's monthly budget and finance meeting since these expenses can change and drastically affect your cash flow.

At a minimum a quarterly meeting with your community's management team and community leaders should be held to review your current and future cash flow. A detailed look at the budget variance report should be examined and discussed as to items with extreme discrepancies and should be explained and accounted for. In a lot of instances these are due to "timing" and either the money was not collected or spent in the desired month as budgeted.

Every board member and involved upper management team member should be familiar with the financials and be prepared to ask questions during the regular board meetings. A good policy is for the management team to review the financials internally and with the budget/finance

committee and discuss any "out of the ordinary" line items. Once everyone is comfortable with the reports, they should be forwarded to the entire board allowing sufficient time for the board members to go over the reports and prepare any questions that they may have. Very often, board members do not look at the financials prior to the board meeting and a short overview of the financial health of the association

"Planning ahead based on what you know today can eliminate an unfortunate situation in future months."

is provided to the board when the board meets. It is the responsibility of every board member to be familiar with these reports and if asked, be prepared to discuss the fiscal status with the association's residents.

Another integral part of financial leadership is maintaining, tracking and updating a truthful and current reserve schedule. It's common practice to have a qualified engineering firm update your schedule every three to five years, but it is also very important to review your reserve expenditures and upcoming projects at every financial meeting to make sure your capital replacements are being planned and notes are made to your reserve schedule indicating a major repair or replacement of a reserved capital item.

In closing, the overall theme of my article this month is stressing the importance of taking charge of your financial reports and making sure your key community "leaders" are truly "leading" and not just accepting your financial reporting as a non-important function of your community. Planning ahead based on what you know today can eliminate an unfortunate situation in future months. ■

2017 EVENTS & EDUCATION CALENDAR

JULY

- 13** **Senior Summit**
Renaissance at Manchester, Manchester
- 19** **3rd Annual Olympics**
Thompson Park, Jamesburg
- 27-28** **M-340: Large Scale Management**
Monroe Twp.

AUGUST

- 10** **Annual Beach Party**
Martell's Tiki Bar, Point Pleasant
- 15** **Board Leadership Development Workshop**
CAI-NJ, Freehold
- 22** **Lecture Series**
CAI-NJ, Freehold

SEPTEMBER

- 7** **CAVL Round Table**
TBD
- 14** **Manager Leadership Workshop**
TBD
- 19** **Lecture Series**
CAI-NJ, Freehold
- 20** **Business Partner Meet-Up**
TBD
- 28** **FAST Meet-Up**
Hopewell Valley Vineyard, Pennington

OCTOBER

- 17** **Preconference Networking Reception**
NJ Convention & Expo Center, Edison
- 18** **Annual Conference & Expo**
NJ Convention & Expo Center, Edison
- 26-28** **M-100: The Essentials of Community Association Management**
West Windsor

NOVEMBER

- 16** **Manager & Business Partner Round Table**
TBD

DECEMBER

- 7** **Annual Retreat**
Clearbrook Community Association, Monroe Twp.
- 14** **FAST Meet-Up**
TBD, Red Bank



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LEGISLATIVE UPDATE

Carol Koransky, CPA
WILKIN & GUTTENPLAN, PC
LEGISLATIVE ACTION COMMITTEE TREASURER

Considering the Uncertainties in a Budget

Preparing an accurate budget can be a daunting task. One that is made harder as there is no definitive legislative guidance or required statutory funding for replacement needs in New Jersey. One thing is certain and that is there can be a great amount of uncertainty in preparing a financial budget for an association. The basic premise in preparing a budget is to evaluate the various outcomes for differing scenarios, chose the most likely based on current knowledge and past experience and then try to have a backstop in place for less likely outcomes.

The first task in putting that safety net in place, is to understand the uncertainties the association faces as best as you can. These areas differ depending on the type of association – homeowners association or condominium association. And if a condominium association, are the buildings one or two levels or is it a high rise building with many mechanical systems. Additionally, the age of the association factors in as well — is the association currently being built, is it a multi stage build out or, is it well established or even an aging community? An older association may have built up an operating reserve and therefore has some leeway within the budget to manage and absorb unexpected expenses, additionally, there is a history to rely on in budgeting and the Board can look to past expenses to predict current expenses. However, an aging association may need increasing repairs and maintenance to keep it in great shape. To help compensate, these budgeted line items could include a buffer for the unexpected additional costs.

For an association currently being built, even those in the process of a multi stage build out, the largest uncertainty the Association faces would be the Sponsor funding of the operating budget and the replacement fund. Under the New Jersey Planned Real Estate Development Full Disclosure Act, the Sponsor is responsible for funding the operating budget and replacement fund in accordance with the Sponsor's

determination of benefits derived by the Sponsor from line items within the budget. However, there is no legislative guidance as to specific technical implementation. There are various approaches and schools of thought with respect to the concept of benefits derived funding. Therefore, it is important to come to an understanding with the Sponsor as to their interpretation as well as their understanding of their obligation. A young association generally has very little operating surplus to work with, so a clear understanding, prior to the preparation of the budget, of the Sponsor's intended contribution, is very important. Expenditures must be budgeted such that the plan is to stay within the anticipated total amount of the Sponsor's contribution plus unit owners' membership assessments. Actual to budget variations should be tracked throughout the year, so that any line item overages can be addressed quickly.

For associations that are no longer under developer control, the largest areas of uncertainty tend to be weather related expenses and replacement/deferred maintenance funding. As we know, weather is completely unpredictable. One year snow fall is at an all-time high and other years it may be minimal. One approach to address uncertainty for this expense is to establish a separate fund for weather dependent costs such as snow clearing. Annual funding can be based on an average of the past several years. For Association that do not have the history to rely on, the information can be obtained from other sources such as the Rutgers University climate website. If costs at the end of the year are under the average, then those extra funds can be carried forward and saved for the next year when costs are over budget. This can help to even out the ups and downs of snow clearing expenses and help to reduce the uncertainty of this line item. Of course, this fund should be reviewed before each budget is prepared to be sure that adequate monies are being accumulated in the fund, but not to an excessive degree.

"The first task in putting that safety net in place, is to understand the uncertainties the association faces as best as you can."

Funding for the replacement fund based on an independent engineer's recommended funding helps to reduce the uncertainty for what the annual budgeted contribution should be. The engineer's recommendation should be based on a current study, one completed within the last three to five years. Reserve studies often offer various funding methodologies — full funding, threshold funding and baseline funding. Full funding is the most conservative and generally results in the largest contribution of the three methods. Threshold funding, based upon a 30 year cash flow analysis, sets a replacement funding goal of keeping the replacement fund balance above a specified dollar amount at its lowest accumulated amount. Baseline funding sets a replacement funding goal of a zero balance at its lowest accumulated amount. Both full funding and threshold funding allow for some funds to accumulate thereby protecting against the uncertainty of rising costs and expenditures occurring prior to the original estimated time frame. Baseline funding, does not allow for the accumulation of any funds, giving no protection against these uncertainties. Keeping interest income earned on replacement fund assets in the replacement fund is a good hedge against inflation and helps to reduce some of the uncertainty of rising costs. Reducing the uncertainty in replacement funding, helps to reduce the need for an unexpected special assessment. Another critical factor to consider is the age of the association. As an association ages, it is more likely that large projects may be looming, so it is important to note if the accumulated fund balance is also in line with the engineer's projected balance. If the accumulated funds are significantly less than where the engineer has projected, it will be important to institute a catch up plan, so that funds will be in place when needed. An important concept to remember is that reserve studies usually include funding for those common elements within a 30 year life cycle. For each new update, there may be many new common elements whose lives may now be within the 30 year period that require funding. If the study

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INSIDE CONNECTION

JACLYN OSKIERKO | DIRECTOR, EVENTS & EDITORIAL

Most of you by now have heard about the CAI-NJ young professional group, the Future All Star Team, also known as F.A.S.T.. This group of rising stars in our industry has been making quite a name for themselves this past year and after all the success they have had, we now can call them an official CAI-NJ committee, as voted on by the CAI-NJ Board of Directors.

This group is chaired by Lauren Vadenais and Nicole Skaro and includes the following members:

Jamie Cullen, Jackie DiPasquale, Robert Flanagan, Esq., Vincent Kazmierski, Ashley Payne, Gabe Vitale, Briana Walsh and Kristy Winchock

In the past year, F.A.S.T. has raised thousands of dollars for various charities, and supplied many organizations with goods needed through several efforts such as, the school supply drive and food drive, Olympics events and other exciting initiatives. This month the group will be hosting the 3rd Annual Olympics event, which raises money for The Make a Wish Foundation of NJ. I strongly encourage you to get involved in this upcoming initiative. Keep an eye out in the next issue to hear how much was raised for this amazing charity and to see photos from the event.

Also, coming up for this group are the informal meetups, the next one will take place September 28th at Hopewell Valley Vineyard. Please look at page 27 for more information.

Other programs to keep an eye out for include, the school supply drive that will take place at the Beach Party on August 10th, we invite you to bring supplies to the event or mail them to the CAI-NJ office. The October fundraiser for breast cancer awareness, the Movember contest that support men's health initiatives and the adopt a family for the holidays will round out the year.

We hope you will continue to support the F.A.S.T. committee who works tirelessly to make each of these programs a success. Also, if you are a young professional or have

"...if you are a young professional or have a young professional in your organization, please encourage them to participate in F.A.S.T. ..."

a young professional in your organization, please encourage them to participate in F.A.S.T., either by joining the committee in the future, or by taking part in the committee's activities. This group is a great place to make invaluable connections with other young professionals in the industry. ■

See page 27 for details on the F.A.S.T. Meetups

Dear CAI-NJ Members,

For close to twenty years, the Community Association Political Action Committee has been the political arm of the New Jersey chapter of Community Associations Institute. As you may know, our legislative efforts in Trenton are vital to the future of the community association industry. Many of our elected officials lack a fundamental understanding of community association issues and many competing trade associations such as the realtors, homeowners, and bankers have large PACs and have been raising funds for many years. It is critical that we constantly work to be the authoritative voice on the issues that impact our members.

CA-PAC represents 6,700 community associations where approximately 1,350,000 residents live in 519,000 homes in New Jersey. When the legislature considers amending the laws that govern community associations members of the legislature should turn to CAI-NJ for advice. One way we can educate these legislators and grow awareness of our industry is with a strong Community Association Political Action Committee (CA-PAC).

By pooling our resources we achieved our 2016 fundraising goal and raised over \$30,000. The money you contribute ensures that people who understand the community association industry are elected or reelected to serve in Trenton. I challenge you to join me in preserving the future of the community association industry by contributing to CA-PAC. With your support we can surpass our 2016 fundraising goal in 2017. Please send in your contribution today.

Thank you,



James Rademacher
President, Community Association Political Action Committee



MID-SESSION UPDATE

New Jersey is in the middle of its 2016-2017 legislative session, and CAI-NJ is hard at work on some of

our top priorities, including:

Municipal Services

CAI-NJ is advocating for advancements in the municipal services provided to your community including the maintenance of fire hydrants.

Delinquencies and Expedited Foreclosures (S 1832)

We are closer than ever to working with the banks and lenders to maintain vacant units and assume responsibility for maintenance fees. We are also pushing to include rent receiverships as an option.

Board Elections "Radburn" (S 2492/ A 4091 also S 1805/ A 3163)

This legislation would alter the community association nomination and election process. Radburn is a community in North Jersey with a controversial election process that is the center of these bills.

CURRENT EVENTS

While CAI-NJ remains committed to our 2016 goals, we continue to protect our communities from proposals that could add to your cost of living. **Some examples include:**

Insurance Deductibles (A 3683)

This legislation deals with the Association's ability to transfer the deductible to homeowners in condominium associations.

Security Cameras in certain common interest community lobbies (A 3431)

Is your community considered in this legislation? If passed, certain communities in high crime areas of our state will be required to install security cameras in designated areas.



Snow Contractor Indemnification (S 181)

If passed as presently worded, snow contractors would be indemnified for any damage or injuries as a result of their snow removal/ice control operations. CAI-NJ is involved in a coalition with several other organizations to meet with our elected officials and make sure our communities are protected.

Rain Sensor Installations (A 1484)

If you have a community controlled irrigation system, you may be required to install rain sensors to your system.





CA-PAC
*Community Association
 Political Action Committee*

YOUR CONTINUED SUPPORT OF CA-PAC RAISES THE PROFILE OF NEW JERSEY'S COMMUNITY ASSOCIATIONS!

To learn more about CA-PAC, please contact Laura O'Connor at laura@cainj.org or 609.588.0030.

"Are you willing to give \$1 per door to CA-PAC to protect your community association's interest in Trenton?"

--James Rademacher, CA-PAC President, Rezkom Enterprizes



CONTRIBUTION FORM

Community/Company: _____

Individual Name: _____

Mailing Address: _____

City, State, ZIP: _____

Phone: _____ Fax: _____

Email: _____

Occupation: _____ Employer: _____

Employer Address: _____

City, State, ZIP: _____

Management Company Name: _____
 (Community Association's Only)

Individual..... \$25-\$100 \$ _____
 • Community Manager
 • Board Member
 • Homeowner

Business Partner\$250-\$500 \$ _____

Management Company \$500 \$ _____

Community Association..... \$ _____
 (Suggested contribution \$1 per unit)

Other \$ _____

**Please make your CORPORATE or
 PERSONAL CHECK payable and mail to:
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DO NOT INCLUDE MY NAME OR COMPANY ON THE LIST OF CA-PAC CONTRIBUTORS

The New Jersey Election Law Enforcement Commission requires us to collect and report the name, mailing address, occupation and name of the employer of contributors whose contribution exceeds \$300 in a calendar year. Contributions to CA-PAC are not deductible for federal income tax purposes. Contributions are not limited to suggested amounts. CA-PAC will not favor nor disadvantage anyone based upon the amounts or failure to make PAC Contributions. Voluntary political contributions are subject to limitations of ELEC regulations. CA-PAC contributions are not considered payment of CAI dues.

CHAPTER TRENDS

Elaine Warga-Murray, MA, PCAM Has Been Selected for Inclusion In The Trademark Women of Distinction Honors Edition

Regency Management Group's founder and CEO, Elaine Warga-Murray, was recently selected for inclusion in 2017-2018 TRADEMARK WOMEN OF DISTINCTION Honors Edition for her demonstrated dedication, leadership, and professional excellence. The Trademark of Distinction Honors Edition highlights professional accomplishments of today's best and brightest women in business.

Her exceptional reputation, years of service, level of expertise and positive peer rating were all factors contributing to her selection. The organization noted that Elaine "prides herself on honesty and integrity and is the kind of professional admired by colleagues and peers alike. She has made



Courtesy CAI-NJ.

(left) Elaine Warga-Murray.

her mark on her profession as an expert and will become part of history as one of the top professionals in her field."

Edward I. Wilkin, CPA, MBA, CGMA Named President of NJCPA

Wilkin & Guttenplan Managing Shareholder Edward I. Guttenplan, CPA, MBA, CGMA has been named president of the New Jersey Society of CPAs (NJCPA), and began his one-year term on June 1, 2017.

As an NJCPA member, Ed has been involved with numerous committees, including the Education Foundation, Finance, Retirement Savings Plan, and Scholarship Fund committees. He has also held positions on Student Programs & Scholarships and Special Awards committees. He has received several organizational awards including the Distinguished Service Merit Coin, the 2004/2005 Leadership Award, and the Diversity & Inclusion Impact Award. Ed has also served terms in each available board position of the Middlesex/Somerset Chapter.

Ed is extremely active in his community and has served on boards for multiple local organizations. His dedication to professional associations has led to numerous awards from the Community Association Institute, and culminated in his induction into their Hall of Fame. ■

Chapter Trends Editorial Guidelines

- All submissions must come from and be about:
 - A member of CAI-NJ (Manager, Management Company, Board Member, Business Partner or Business Partner Employee) in good standing.
 - Companies/Communities are permitted four (4) announcements per calendar year.
 - Submissions are limited to 150 words.
 - Members are responsible to condense the information appropriately, as CAI-NJ will not do so. Any submissions over 150 words will not be published.
 - Submissions may include (1) image.
 - Submissions should not be advertorial in nature.
- Please note, CAI-NJ reserves the right to edit any submissions. The chapter reserves the right to omit information as necessary. CAI-NJ has the exclusive right to refuse to publish any submissions for any reason.
- For questions regarding the Chapter Trends section of *Community Trends*®, please contact jaclyn@cainj.org or 609-588-0030.

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CONDOMINIUM ASSOCIATION GETS **BIG WIN** AGAINST DEVELOPER FOR CONSUMER FRAUD

By Gene Markin, Esq.
Stark & Stark

"Unfortunately, the Belmont suffered from water intrusion problems from the very beginning."

In late 1998, Monroe Station Associates ("Monroe Station") started construction on the Belmont, a seven-story, thirty-four unit condominium building in Hoboken, New Jersey. Monroe Station served as the sponsor, developer, and general contractor of the Belmont. Prior to completing construction, Monroe Station filed a Public Offering Statement ("POS"), which stated that there were no known defects in the common elements of the Belmont building that a prospective purchaser could not determine by a reasonable inspection. Attached to the POS were certain marketing materials, which provided that the potential buyers would be getting a "Proven Developer and Construction Management Team which has overseen

the building and renovation of over 400 Single Family & Condominium Homes, and over 1,000,000 Sq. Ft. of Office/Commercial/Retail Development."

In reality, the Belmont was the first building the owner of Monroe Station, Dean Geibel, had ever developed. Having hired several experienced project/construction managers, Geibel relied on their collective experience as support for the representation in the marketing materials that the buyers would be getting a "proven" developer. Unfortunately, the Belmont suffered from water intrusion problems from the very beginning. Unit owners experienced water leaks into their units from molding around windows, light fixtures, balconies, and air-conditioning ducts.

CONTINUES ON PAGE 18





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City, State, Zip: _____

Phone: _____ Fax: _____

Email: _____

_____ Tickets (see pricing below) TOTAL: \$ _____

Note: Ultimate Partners receive 4 tickets. Elite Partners receive 2 tickets. Premier Partners receive 1 ticket.

Registration:	Before 7/21	After 7/21 or Onsite
CAI-NJ Members:	\$90	\$100
Non-Members:	\$145	\$160

Please list the name, company and designations of additional registrants. If necessary, please attach an additional sheet of paper (i.e.: John Smith, AMS, CMCA – ABC Company).

- 2. _____
- 3. _____
- 4. _____

Payment Methods:

1.) Pay by check, payable to CAI-NJ. Mail completed form and payment to:
 CAI-NJ Attn: 2017 Beach Party
 500 Harding Road, Freehold, NJ 07728

2.) Pay by credit card. Please fax to (609) 588-0040

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Card Number: _____

Exp. Date: _____

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Cardholder Signature: _____

*Cardholder acknowledges receipt of goods and/or services in the amount of the total shown hereon and agrees to perform the obligations set forth in the cardholder's agreement with issuer

Backpack & School Supply Drive

Please help us by supplying the basic tools to families and give every child a great start to the 2017-2018 school year. The drive will take place at the Beach Party. Bring your donations with you!

BIG WIN...

from page 16.

In response, the Association hired various contractors, home inspectors, and professional engineers to investigate, test, and repair the source of the water leaks.

Over the course of several years, the condominium association governing the Belmont ("Association") attempted to fix a variety of construction deficiencies that had been identified and were suspected of causing the water intrusion issues. The water leaks continued however,

and in January 2007, the Association stopped making repairs and filed suit against Monroe Station and other parties alleging negligence, fraud and violations of the Planned Real Estate Development Full Disclosure Act and the Consumer Fraud Act ("CFA"). The matter went to trial where the testimony focused on the origin and cause of the water infiltration, with the Association's experts attributing the problem to construction defects and Monroe Station's experts blaming poor or inadequate maintenance.

According to the Association's expert, the total estimated cost to remediate the exterior and interior of the Belmont was approximately \$1,825,000.00. Conversely, Monroe Station's expert estimated the cost of the necessary repairs to be \$741,000.00. The jury returned a verdict in favor of the Association, awarding it \$2,186,675 in damages, with Monroe Station being responsible for 80% of the damages (\$1,749,340.00). The trial court then awarded treble damages, pre-judgment interest, and attorney's fees giving the Association a total judgment against Monroe Station in the amount of \$7,236,677.

Monroe Station appealed the judgment by challenging among other things, (1) the Association's standing to recover for ascertainable losses of members of the Association who were not original purchasers; (2) the Association's standing to recover for damages to windows which it argued were not part of the common elements; (3) the applicability of the CFA to the representations made by Monroe Station, and (4) the trial

CONTINUES ON PAGE 20

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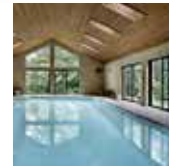


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BIG WIN...

from page 18.

court's award of prejudgment interest on the punitive portion of the CFA damages award.

In its written opinion captioned *Belmont Condo. Ass'n v. Geibel*, 2013 N.J. Super. LEXIS 105 (App. Div. July 9, 2013), the Appellate Division affirmed in part, and reversed in part. The Appellate Division had no trouble finding that the Association was an appropriate party in interest with standing to pursue CFA claims on behalf of individual unit owners. Because the ascertainable loss being alleged was damage to the common elements, the Association, charged with the exclusive responsibility of maintaining and repairing the common elements, had standing to recov-

er for the misrepresentations made by Monroe Station to the original unit purchasers. It made no difference that the Association itself could not demonstrate reliance on the alleged misrepresentations.

In order to state a claim under the CFA, a plaintiff must allege three elements: (1) unlawful conduct; (2) an ascertainable loss; and (3) a causal relationship between the defendants' unlawful conduct and the plaintiff's ascertainable loss. See *N.J.S.A. 56:8-19*. The CFA delineates the conduct that will amount to an unlawful practice as:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, sup-

pression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

[*N.J.S.A. 56:8-2* (emphasis added).]

A plaintiff therefore need not show reliance on the unlawful conduct of the defendant as long as an ascertainable loss resulting from defendant's conduct is demonstrated. Accordingly, in order to prevail, a plaintiff need only demonstrate a causal connection between the unlawful practice and

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the resulting ascertainable loss. The Association did just that: it presented evidence that the POS and accompanying marketing materials were distributed to all the original purchasers in order to induce them to purchase their units. Reliance was not a required element; and therefore, the Appellate Division rejected Monroe Station's arguments to the contrary.

Next, Monroe Station contended that the Association's CFA claim failed as a matter of law because the POS representations were true at the time they were made and because they were not accompanied by "aggravating circumstances." The Appellate Division disagreed.

A false statement of fact is not an essential ingredient of a plaintiff's cause of action based on affirmative wrongdoing. Instead, the capacity to mislead is the prime ingredient of an unlawful practice under the CFA. Intent is irrelevant. Therefore, a claim of literal truth will not constitute a defense to a plaintiff's CFA claim where the overall impression created by an advertisement is misleading and deceptive to an ordinary reader.

According to the Appellate Division, Monroe Station's statement that there were no known defects in the common elements that could not be determined through reasonable inspection, while literally true at the time made, because they were made before construction, clearly had the capacity to mislead an average reader. As such, the developer's claim of literal truth was not a valid defense to the Association's CFA claims.

The Appellate Division likewise rejected Monroe Station's "aggravat-

CONTINUES ON PAGE 48

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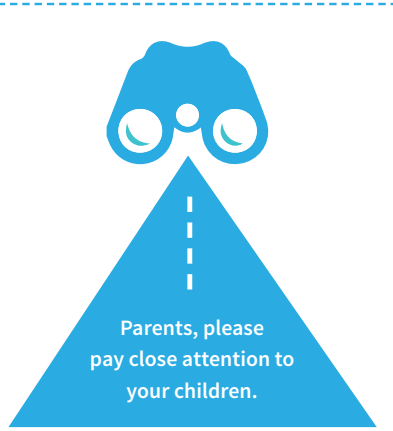
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an essential guide to summer pool safety

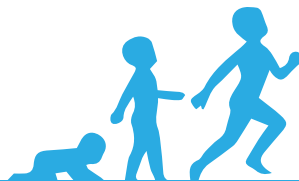
By Ben Basch, *Chief Development Officer, American Pool Enterprises*

prevention

Drownings and pool-related injuries are preventable. What can you do to prevent tragedy?



Never let a non-swimmer rely on pool noodles or floaties in the water - a big pool no-no! These are toys that should only be used when you are within arms reach of the child. Drowning is the...



number one

cause of injury death for ages 1-2...¹ and the

number two

cause of accidental death for children and adults ages 5-44.¹

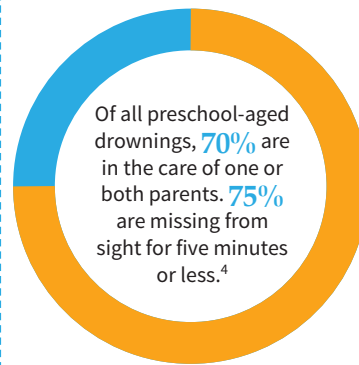
importance of parental supervision

Parents exert a much stronger influence over their children than a facility lifeguard. Watching your children closely will allow lifeguards to focus on preventing injuries and drowning rather than correcting bad behavior.

19%

of drowning deaths involving children happen at pools with lifeguards present.²

Always designate a caregiver who is not under the influence of alcohol to be responsible for maintaining visual contact of your child.



If you need to leave the pool deck for any reason, bring your child with you.

75%

Maintaining fences barriers and gates prevents injury to kids, pets and the curious public. Always be sure that the pool gates are locked outside of operating hours.

Talk to your lifeguards or pool manager about breakaway wristbands. They allow lifeguards and patrons alike to know everyone's swimming ability, and to identify non-swimmers, giving them the attention they need.



Children should only wear U.S. Coast Guard approved



life vests. Before entering the pool, ensure that their life jacket is in good condition. There should be no rips, tears, holes or shrinkage of the buoyant materials. Ensure that your child's life jacket is worn properly. A life jacket that is fitted correctly should feel snug with all straps and buckles secure, keeping the child's chin above the water, allowing them to breathe easily.

UNLESS THERE IS AN **ABSOLUTE EMERGENCY**, STAY OFF OF YOUR CELL PHONE OR TABLET. GIVE YOUR CHILD **YOUR FULL ATTENTION** WHEN AT THE SWIMMING POOL.

75%

of non-swimmer drowning injuries happened in the shallow end between 2007 and 2013.³

1. Centers for Disease Control and Prevention. Injury Prevention & Control: Protect the Ones You Love — Child Injuries are Preventable. 2. Lights! Camera! Action! Hollywood's take on drowning is a distorted view of a quiet killer. Dr. John R. Fletemeyer. 3. Redwoods Group, Shallow Water Does Not Equal Safe. 4. Infant Swimming Resource, National Drowning Statistics.



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SHOULD WE RESERVE MONIES FOR SIDING/TRIM REPLACEMENT?

By Andrew Amorosi, P.E., R.S., Principal
*The Falcon Group, Engineering,
Architecture & Energy Consulting*



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Capital Reserve Funding Analysis has a primary purpose to offer recommendations for the amount of monies an association should budget on a yearly basis for the future replacement of commonly owned elements of a single or multi-family community. The analysis and recommendations provide an important guideline that helps aid in the bypass of possible future special assessments of the individual unit owners.

Building finishing systems or siding, whether EIFS (synthetic stucco), stucco, wood, vinyl or even aluminum or adhered stone veneer, have often been carelessly eliminated or omitted from the capital reserve funding of many communities. Common reasoning is that there is a presumption with regards to siding that it should “last for 40 or 50 years”, or “it should last as long as the building”. Unfortunately, many aging communities are now being faced with the hardship of replacing siding without the necessary funds to do so. In some cases, the result has been significant impact on the residents of the community due to

the associations imposing special assessments upon residents of the community, which can be extremely costly and a large financial burden. While premature replacement is more common with EIFS, stucco surfaces and wood style siding, associations with vinyl or aluminum siding are also being affected.

Siding manufacturers have come a long way in providing an improved product and superior warranties for the materials, which affords some assurance of protection; however, there are many factors that affect the performance and useful life of a siding material or building finishing systems that tend to be ignored and forgotten. Community associations should be made aware and sufficiently educated of the potential problems that could arise.

EIFS/Stucco

EIFS, stucco and adhered masonry veneer (faux stone) systems rely heavily on the adequacy of the initial installation to function efficiently and effectively. A system that has

CONTINUES ON PAGE 26

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SIDING/TRIM...

from page 24.

been improperly installed can lead to moisture being trapped behind the material, weather barrier deficiencies causing leaks, mold, and even structural damage. Improper detailing can also cause surface cracking and failures.

There are numerous mistakes an unqualified or lackadaisical applicator can make that result in deficient installation. These mistakes include improperly fastening the insulation board or lath to the building structure, failure to install the reinforcement mesh properly, failure to install the proper thickness of material or, most often, improper draining (flashing) of the systems and defective interfaces

with adjoining building materials. This is something that no association should have to encounter as it can be avoided.

The results of these conditions will reduce the effective useful life and a total replacement of the system will eventually become an urgent situation. In addition, ongoing maintenance and re-coating are needed for these systems and should be budgeted for, accordingly and appropriately, through a reserve or deferred budget. While having a successful lifetime of 40 to 50 years, dependent upon the product and installation, reserving funds for eventual replacement is highly recommended when the remaining useful life is under 30 years.

Wood Siding and Trim

Wood siding and trim require continued maintenance and overtime, an inevitable replacement. Typically, wood siding and trim will begin to show signs of aging over their useful lifetime. It is important that deteriorated sections of the trim or siding are replaced or maintained prior to any staining and/or weatherproofing project. Failure to properly prime or paint trim on all sides and at cuts is a common reason for premature replacements. If your community has significant amounts of wood trim, a line item in a reserve of deferred maintenance budget is crucial.

Siding installations in communities may have too much unprotected weather exposure and/or a very thin siding thickness. As a result, splitting and cupping of the siding will eventually occur and may lead to problems, leaks and costly replacements.

Most importantly, the aging siding

CONTINUES ON PAGE 28



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SIDING/TRIM...

from page 26.

may not have been properly maintained and is now in predominantly poor condition. There may be many areas where the existing siding is cupped and brittle and chances are the nails at many locations may be rusted, ineffective or missing. Rusting fasteners can expand and result in holes in the building envelope. Sections of the siding may have voids (through knotholes or splitting members) resulting in further costly damage. The progression of these listed conditions will continue to worsen and lead to possible water penetration and possible additional damage to the existing wall sheathing or interior space.

Increased replacements and maintenance should be expected and arranged overtime. A 25 to 30-year useful life is typical and reserving funds for an eventual replacement is encouraged.

Vinyl/Aluminum Siding

As with any material, the existing vinyl or aluminum siding will require periodic minor maintenance to avoid water infiltration. In addition, periodic cleaning (power washing) should be accounted for. The association's maintenance plan should be continually updated to ensure that the siding is maintained properly at all locations.

As the buildings age, deficient fastening practices may cause additional warping at sections of the siding.

Initial detailing of flashings and underlayments is paramount to insure a weather tight installation. It is imperative to have periodic inspections of the materials' weathering abilities and

the inspections findings should be compared to the warranty conditions.

An increase in maintenance along with inspections for damage or aesthetics should be expected within the useful lifetime of the siding. A 40 to 50-year useful life is typical; however, reserving funds for future replacement, urgent repairs, and maintenance is crucial when it falls under a 30-year remaining useful life.

Where Do We Stand?

Unfortunately, the above-discussed installations or material deficiencies are not typically apparent to the association in a visual aspect; however, a detailed inspection by qualified personnel would provide clarity. Typically, as the problems with building leaks become progressively prev-

CONTINUES ON PAGE 36

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WHEN IT COMES TO PERSONAL FINANCES YOU OWE A DUTY TO YOURSELF: When Was the Last Time You Read Brokerage Account Statements?

By Angela Morisco, Esq.,
Becker & Poliakoff



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Board members and management companies are engaged to oversee and maintain the financial well-being of community associations and to implement financial policies that contribute to the financial health of the community. Board members regularly review aged owner balance reports to ensure that assessments are being collected and that money is being spent prudently. Condominium assessments have been described by courts to be the financial lifeblood of an association. Similarly, your brokerage account may be the lifeblood to your retirement and investment savings plan. As such, you have a responsibility to yourself to understand your brokerage account statements.

As the self-regulatory organization that oversees the brokerage industry, the Financial Industry Regulatory Authority ("FINRA") asks this seemingly simple question on its website:

"When was the last time you read your brokerage account statements?"

Investor literacy is important to ensure that financial goals can be achieved. Investors should understand the importance of

taking an active role in the management and protection of investment accounts. Although to some a brokerage account statement may appear to be intimidating, investors should be aware of the information it contains. All brokerage firms and most other financial institutions provide customers with periodic statements¹ which contain various types of information about the holdings, activity, and value of the account at the statement ending date. Although there are almost as many different forms of account statements as there are brokerage firms, certain basic information is featured in almost all of them. Investors should carefully review this information.

Investors have a right to clear, concise and accurate information about investments.

Prior to investing, education on how to evaluate and measure risks and conflicts of interest is critical. It is also important to understand the level of discretion a financial professional should have over an account and to be able to understand and access account statements.

First, determine if the personal information is accurate, i.e. the account title (names of person, entity, trust, or company), address, and most importantly, the investment objectives. Second, for most individuals a review of

CONTINUES ON PAGE 32

"Investor literacy is important to ensure that financial goals can be achieved."

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BROKERAGE ACCOUNT...

from page 30.

an account statement ends with a comparison of the ending value of the current period with that of the previous to determine the account has increased or decreased in value. Your review, however, should not end there. Investors are cautioned to understand if a change in the value was the result of a deposit or withdrawal of cash or securities, or solely based on an increase or decrease in the securities that were already in the account.

Third, investors are also cautioned to analyze the activity section to confirm that all transactions were authorized. In most brokerage accounts, a transaction should not occur unless and until the account owner specifically authorized the transaction(s) in advance. Investors are advised to compare the information contained in the transaction confirmation generated when the order is placed, against the account statement to ensure that the security, price, and total amount paid or received is correct. All transactions detailed in the statement should be familiar to and have been approved by the investor. If there is a discrepancy, an investor should contact the broker immediately and ask to have the discrepancy investigated and to confirm that any necessary adjustments are made. If at any time an investor feels uncomfortable with the responses the broker is providing, the firm's compliance department should be contacted immediately.

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CONTINUES ON PAGE 42



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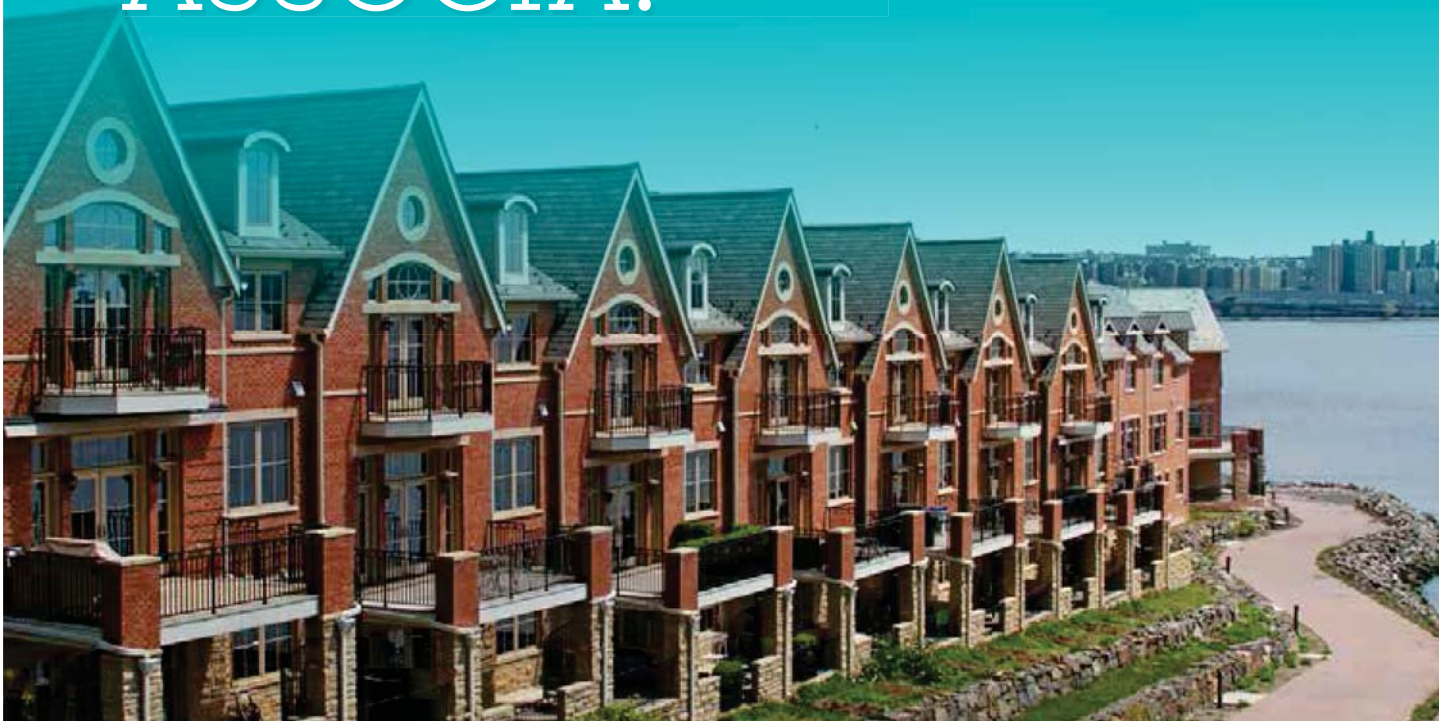
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SIDING/TRIM...

from page 29.

alent in communities, the need for significant repair and/or replacement of siding becomes a grim and costly reality.

Communities can begin to look aesthetically "weathered" and "old" even with sufficient and proper installation. Siding repairs and replacements may become a greater part of the operating or maintenance budget, and it makes economic sense to replace and upgrade the system.

Management may begin to experience frequent complaints about water infiltration and interior damage. The interior damage to the framing members, sheathing or unit amenities becomes urgent and very significant. Once these telltale signs start to occur, a replacement of the siding becomes crucial. At this point in time, the cost of maintenance will become significant and a phased replacement of the system is, in all likelihood, a financial reality.

The need to efficiently budget for siding replacement and/or the inspection of installation and materials should start at the transition phase of a community association. This will enable the repair of deficient installation and the

proper funding of this replacement item. Unfortunately, older communities do not have this luxury; however, starting to fund for siding replacement at any time is paramount in maintaining the integrity of older communities. When the time arrives for siding replacement, some funding is clearly better than none at all, but being fully-funded is the ultimate goal.

If you live in a new or aging community, have your siding system checked for the materials' existing condition and installation detailing during an updated capital reserve inspection. Review leak history that is associated with siding and windows. Incorporate any recommended repairs into the association's transition agreement or preventative maintenance plan. Proper and continued maintenance and repair, from highly qualified personnel, will prolong the useful life of any system.

Whether it's EIFS, stucco, wood, vinyl, aluminum or adhered stone veneer siding, take the educational information included in this article and make a determination to include the eventual replacement, either in a phased fashion or in total, of all of the communities siding in the association's Capital Reserve Funding Plan. ■



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For questions, contact Laura O'Connor, Director of Membership & Marketing at laura@cainj.org or (609) 588-0030.

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BROKERAGE ACCOUNT...
from page 32.

what the broker represented the fees would be. Investors should not hesitate to request clarification of any charges or fees that may seem inaccurate, unfair or unreasonable.

Investors should also understand that many small firms utilize the services of a clearing or custodial firm to hold clients' funds and securities and to issue the account statements as most clearing firms are larger and have greater financial resources than small brokerage firms. In cases where a smaller brokerage firm utilizes a clearing firm, the account statements will disclose the names of both firms, i.e. the introducing brokerage and the clearing firm. If an investor receives a statement from a firm whose name is

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not familiar or is not recognized, the firm telephone number on the statement should be called to determine the status of the account and the firm that introduced the account.

Finally, and most importantly, if an account statement is received that does not look like it was professionally prepared, and/or an investor is unable to find any information about the firm online or through FINRA's Broker Check website, the broker and/or FINRA should be contacted immediately to inquire about its authenticity.

As in any situation, there are various legal and financial professionals who may be consulted to educate and to assist investors to understand brokerage account statements. ■

END NOTE:

1. Most firms provide account statements on a monthly basis, but for accounts with no activity in any particular month or several months, they may only issue quarterly or annual statements.

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SPOTLIGHT ON SERVICE

With great respect for those who serve our country, the Editorial Committee of CAI-NJ is seeking spotlights on service members. This may include active, or inactive members of the United States Armed Forces.

Please take this opportunity to spotlight someone you know and help the CAI-NJ community recognize and thank them for their service to our country.

Criteria

1. Must be a member of the United States Armed Forces, active, inactive or has served.
2. Must be either a:
 - a. Member of CAI-NJ (Manager, Board Member, Business Partner or Business Partner Employee)
 - b. A parent, spouse or child of a CAI-NJ member (classified above)
3. Must include 500 to 1,000 words about their service along with a photo

For questions or to submit a "Spotlight on Service" contact Jaclyn Olszewski at jaclyn@cainj.org.

★ Submissions may be self-authored by service members or written on their behalf.

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BIG WIN...

from page 21.

ing factors” argument because a plaintiff need not demonstrate “aggravating factors” when the alleged “unlawful practice” is an affirmative misrepresentation. Only when an unconscionable commercial practice such as a breach of contract or breach of warranty is alleged does a showing of “substantial aggravating circumstances” become necessary in order to justify treble damages and an award of attorney’s fees. Since the Association’s CFA claims were based on the unlawful practice of affirmative misrepresentations rather than on an unconscionable commercial practice, the Association was not required to demonstrate “aggravating factors.”

The Appellate Division, however, agreed with Monroe Station that the Association lacked standing to seek damages for the windows because the windows are personal to the unit owners and are not part of the “common elements.” Since the Master Deed did not classify the windows as part of the common elements nor make any specific reference to the unit windows, the Appellate Division reasoned that the unit windows, located within the individual units, are

intended for the use of the individual owner. As such, the Association could not recover for defects in the windows, as those would be individual grievances necessarily left to litigation brought by individual unit owners.

Finally, the Appellate Division reversed the trial court’s award of prejudgment interest on the punitive portion of Plaintiff’s CFA damages award. It is well settled that prejudgment interest is not intended to apply to awards of punitive damages. In *Belinski v. Goodman*, 139 N.J. Super. 351, 360 (App. Div. 1976), the Appellate Division explained:

While R. 4:42-11(b) does not expressly except punitive damage awards from its scope, the policy considerations which gave rise to its adoption suggest that result. Prejudgment interest is assessed on tort judgments because the defendant has had the use, and the plaintiff has not, of moneys which the judgment finds was the damage plaintiff suffered. It is thus clearly implied that interest on the loss suffered by a plaintiff as a result of defendant’s tortious conduct is what was contemplated by the rule.

An award of prejudgment interest is therefore limited to the compensatory portion of a CFA damages verdict.



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Accordingly, the trial court erred in awarding prejudgment interest on the trebled damages amount instead of only on the compensatory damages amount awarded by the jury.

All things considered, this was a big win for condominium associations and unit owners. It is clear that the CFA has teeth and can yield big awards against unscrupulous developers. A multi-million dollar judgment sounds great and is very impressive on paper; however, there still remains the issue of collection. A multi-million dollar award is not worth the paper it is printed on if the developer is insolvent, bankrupt, or judgment proof. Therein lies the rub. Most of the time, developers will create a project specific entity to act as the "developer" of a condominium development that will have no assets as soon as the last unit in the development is sold. Once all the money is gone, there is nothing left for creditors or plaintiffs to seize. That is why many condominium association plaintiffs forego pursuing CFA claims and instead go after insurance proceeds for property damage resulting from negligent construction. ■



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What trends do you see for the Community Association industry?

When looking for HOA trends, one must look at trends in the overall housing market — several of which have direct implications to HOAs.

The combination of increasing rental rates along with a lack of rental inventory is making housing purchases more appealing. This is true not only for Baby Boomers, who may be interested in downsizing, but also for Millennials, the largest living generation in the U.S., who will be making their initial home purchases. What is interesting is that both Baby Boomers and Millennials appear to have similar desires when it comes to housing — they want convenience and amenities that fit their lifestyle whether that be a closed-in suburban location that provides quick access to city services and attractions, the inclusion of digital technology and the ability to be continuously connected, or energy-efficient buildings that support green efforts. HOAs need to allocate time and effort to get the pulse of their extended communities and plan for the changes needed to keep them updated and current to prospective home-buyers.

HOAs also need to be able to effectively communicate their efforts through digital channels. Social media should be considered a medium that will enable and encourage community involvement and engagement — providing channels for an HOA to inform, learn from, and respond to the needs of their residents. ■

See the complete list of Ultimate Sponsors on page 2 of this issue.

ULTIMATE PARTNER Profile

McGovern Legal Services Questions answered by Francis J. McGovern, Jr.



McGovern Legal Services is a twelve-attorney law firm that represents Community Associations, Condominiums and Coops. We love this never-boring, sometimes-crazy and always-rewarding field. Our lawyers are the men and women property managers and board members turn to for empathy, insight, and solutions.

One day we may be litigating complex construction defect claims, the next we may be providing guidance on free speech rights while the next we may be getting a rent receiver appointed. We do these things with empathy so that the managers and volunteer board members achieve their goals without resigning or losing their minds along the way.

Whether it's a high-rise, townhome, or garden-style community, from the top to the bottom of New Jersey, we counsel our associations to seek out common sense solutions while keeping costs in mind.

What is your role in the organization? What is your background? How long have you been in the industry?

As the founder and leader of McGovern Legal Services, my experience is in business law, construction defect litigation,

and association assessment collection. In the more than twenty years that I have dedicated to the association field, I have had the privilege of cultivating my colleagues and proudly watching them become successful association advocates. Many of our attorneys have business and business law backgrounds and all highly value collegiality. We know that we can disagree with a developer, a debtor, or anyone else without being disagreeable. We are zealous advocates for our associations, we fight hard and we are successful but we hold fast to the belief that we can do all of this while remaining civil.

Is there a specific program that you would like to highlight?

Pat McGlone, Esquire and Damon Kress, Esquire focus their practices on remedying construction and financial defects in newer associations. Despite what the media says, times are still tough for many in New Jersey. Because of this, we are working with our clients and prospective clients to formulate creative fee structures so that associations may still be able to pursue their construction and financial defect claims.

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Damon M. Kress, Esq.



Francis J. McGovern, Esq.



Scott K. Penick, Esq.



Michael R. Polulak, Esq.

What might someone be surprised to learn about your company?

Many people are surprised that some of our outstanding, now middle-aged, attorneys were once outstanding athletes. Can you guess which attorney: was an All-American javelin thrower, a goalie for Rutgers ice hockey, an elite rower, an elite distance runner?

What trends do you see for the Community Association industry?

High-rise urban associations will continue to increase. Preservation of personal privacy will continue to be a challenge and may even be marketed as a benefit in certain associations. Cultural, racial, and religious concerns will continue to increase. Associations will have to continue to recognize and attempt to respectfully harmonize various groups. There seems to be a trend toward cultural, racial, and/or religious homogenization in certain associations. This may be natural and even good in some people's eyes but I'm not so sure.

Share one of your most memorable moments in the Community Association Industry.

Having previously been an attorney for banks, early in my association career, I quickly learned how "hands-on" an association attorney must be. Michael Mendillo and I were on the dais at a Four Seasons at Lakewood board meeting when a woman in the crowd collapsed. Michael and I jumped off the dais and assisted her to a side door. She wound up being fine, hypoglycemia apparently, but it was quite an introduction to the field.

What sets your company apart?

Association law is all we do. Working with board members and managers is all we do. Our focus is long-term relationships. We know how hard it is to be a volunteer board member. We know how hard it is to be a manager alone in the management office. We work hard to make our board members' and managers' jobs easier from a common-sense/real world perspective. ■

See the complete list of Ultimate Sponsors on page 2 of this issue.





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Scott T. Dalley, CMCA, AMS, PCAM

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Five New Members

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(May 1, 2017 to May 31, 2017)

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Community Trends®,

Joseph Chorba, CPA,
Editorial Chair

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LEGISLATIVE UPDATE...

from page 9.

is not updated on a consistent cyclical basis, there may be common elements that should be funded but are not being considered. Taking these factors into account will also reduce the uncertainty of adequate funding.

Lastly, a contingency line item is another way to make sure that the budget compensates for the unexpected. The amount that should be included is really a best guess, but can be based somewhat on past experiences. This line item can be used to fund those unexpected costs that are incurred.

Hopefully, a thorough and thoughtful approach, can help to reduce or even mitigate uncertainties within the budget process. ■



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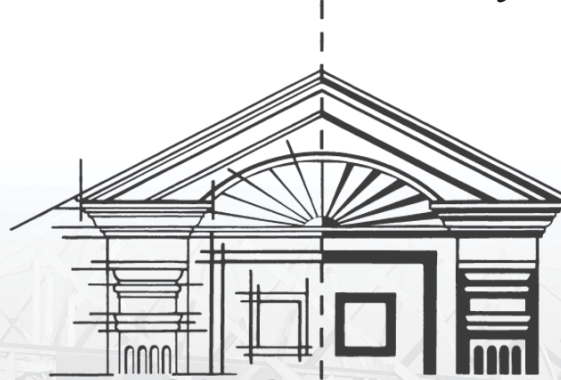
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