

Community Connections



Balancing Act: Operating A Business Based On A Community Of Neighbors

By Lauren C. Holmes, Orten Cavanagh Holmes & Hunt, LLC

Board members are in a unique position of operating a business that is ultimately focused on a community of neighbors. A typical definition of community is a group of people living together in one place. Most communities' governing documents focus on business issues such as assessments, maintenance, insurance, meetings, etc. The Colorado Common Interest Ownership Act ("CCIOA") defines a common interest community in terms of the monetary obligation that comes along with the ownership of certain property. CCIOA was adopted to promote efficiency, management and the availability of funds to homeowners associations, but other than some public policy provisions, does not address how people live together in one place. So, how can boards and community managers balance the legal obligations of a common interest community with creating a sense of community in which people want to live?

In many ways, complying with the Association's legal obligations themselves can build a sense of community over time. For instance, almost all declarations contain a section of use restrictions which are intended to promote harmonious living. Restrictions which are proper for your particular community go a long way towards creating a

neighborhood environment. It is important to periodically review the use restrictions to make sure they are still appropriate for the community. The Board has a duty to enforce use restrictions. While this is one of the less pleasant duties a Board has, it becomes even more difficult when use restrictions are no longer appropriate for the community. Although the Board should be leading any discussions about updating use restrictions, the community as a whole needs to be involved in the discussion. After all, use restrictions should support and reflect the

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The Ethical Dilemmas Of Community Association Insurance

By Joel W. Meskin, Esq., CIRMS, CCAL Fellow, MLIS, EBP

The procurement and maintenance of insurance in the community association industry is shrouded in unique ethical considerations that do not apply to individual insurance consumers. Enter the Community Association Board's ("Board") "fiduciary duty." This process is imbued with inherent ethical considerations for not only Boards, but also Community Association Managers ("CAMs"), Community Association Attorneys, Community Association Insurance Professionals and other business partners.

A fiduciary duty is the legal responsibility to act solely in the best interest of another party (i.e. "the community association"). Fiduciary duties include duties of undivided loyalty, due diligence and reasonable care, full disclosure of any conflicts of interest, and confidentiality. While a fiduciary duty may be violated accidentally, it is still a breach of ethics. Emphasis added.

Ethics Unwrapped: <https://ethicsunwrapped.utexas.edu/glossary/fiduciary-duty>

A Board's fiduciary duty in the insurance procurement process differs from an individual insurance consumer. For example, a board president may want to use his insurance agent brother-in-law who does not have experience in community, the board president may not fully disclose his potential conflict of interest here. Whether the president perceives this as a conflict or not, failure to disclose is a breach of fiduciary duty and therefor an ethical violation. On the other hand, if an individual insurance consumer selects his brother in law, it would not be a breach of a fiduciary duty or ethics, but it could be a bad decision. As Forrest Gump says, "stupid is as stupid does."

A board's fiduciary duty requires the board to protect, preserve and enhance the assets of the association. These assets are the common elements of the association, both tangible and intangible. The keystone to this duty is that the board members must put the interest of the association above his or her own personal interests. This can be counterintuitive for many board members. In fact, many board members seek to join the board for the primary purpose of protecting their personal assets or pursuing their own agenda. As we know, perception is reality. The president above may see this as a no harm no foul situation. On the other hand, others may very well perceive the act as a breach of its fiduciary duty. This misunderstanding by board members regarding their duty is directly or indirectly the genesis of many Director and Officer Liability Claims.

The duty to place the association's interests above the personal interests of each board member can be subtle, obvious, or anywhere in between. The key reason that unit owners elect multiple board members to manage the association, at least theoretically, is as a check and balance insuring the various interests of the membership have a voice.

The By-Laws (the association's operating manual) and other applicable laws are in place to facilitate board fiduciary duties and ethical considerations. This is why it is generally required that board business be conducted during a properly noticed board meeting. Furthermore, most states, including Colorado, have Open Meeting Laws. This is a check and balance on the board's fiduciary duty avoiding decisions being made in smoky back rooms.

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So what do fiduciary duties and ethics have to do with community association insurance? The board is the association's Risk Manager elected to protect, preserve and enhance the assets of the association. The fiduciary duty does not require that the board make the best decisions, or even a good decision. Rather, the board is required to act with a duty of loyalty by putting the association's interest above their own, act with due diligence and reasonable care, and to fully disclose any conflicts of interest.

The board is not expected to be professionals or experts that require special training. For these matters, the board is authorized to seek professionals and experts. Keep in mind that a directors and officers liability policy only provides coverage for board members in their capacity as a "board member" and not as professionals or experts.

For over 20 years I have asked Boards, CAMs and Insurance professionals what is the first question board members ask when considering insurance options? Without exception they all ask "how much?" The only time this is an acceptable as the first question is if all insurance, insurance companies and insurance professionals were the same. It never is! I have never seen any governing documents that requires a board save money when procuring insurance, yet that would appear to be the case based on decision makers' conduct. Yes, a board must be vigilant. The fiduciary duty, however, is to purchase the best insurance to protect the assets. Once the board has done its due diligence by listening to Community Association Insurance Professional presentations, than a cost benefit analysis can be done. Knowledge of price up front will influence your decision process and be a distraction.

Boards must understand that the association is fully insured for every risk! The question is: are they covered by an insurance policy, or will they be self-insured having to look to association assets, a special assessment or a bank loan to fund a claim or loss. At the end of the day, someone must pay.

Another problematic practice by many boards is to defer its due diligence to its independent CAM to procure and maintain insurance. This practice is inherently a breach of the fiduciary duty by the board as well as an unwitting professional error or omission by the CAM. What boards must understand is that no matter the CAM's insurance acumen, she or he is not covered for that E&O under their E&O as it is excluded and not under the D&O as they are not covered when the association sues the CAM.

The board must also keep in mind that if the board sues the CAM, the D&O policy will not defend or indemnify the CAM. To make this an even greater breach of fiduciary duty and ethical dilemma, is that the management agreement more likely than not includes an indemnification provision that would require the association to defend the CAM when the association sues the CAM for not procuring or maintaining the proper and sufficient insurance. Therefore not covered under the policy, but for all intents and purposes, covered pursuant to the indemnification agreement. This latter consequence is another reason the CAM should bring in the insurance professional.

Tip: Insurance professionals do not charge the association for his or her time to present a proposal and answer all questions the board may have. I am also often baffled why a CAM would not mandate that the insurance professional present the proposal(s) and answer all board questions. This is a win-win for a CAM's insurance dread and transfers the CAMs risk of E&O to the insurance professional. ♦

About the Author

Joel Meskin, Esq., CIRMS, CCAL Fellow, MLIS, EBP is the Managing Director of Community Association Products at McGowan Program Administrators. He has been a community association insurance expert for over 20 years, and is a prolific speaker and author nationwide.



President's Message

By Tressa Bishop, USI Insurance Services LLC (formerly CB Insurance)

Community is all around us, both literally and figuratively. Community Associations Institute is the organization that brings us together throughout the year, Community Connections is the name of this quarterly Chapter publication, Community Associations are the entities we all serve, and having a sense of community brings to mind positive feelings.

The tragic collapse of the Champlain Towers South condominium building in Surfside, Florida on June 24th resulted in various community groups rallying together to assist and prevent this tragedy from striking another community association. CAI's Government & Public Affairs Committee established three task forces to discuss best practices, standards, and public policies related to the tragedy: Building Inspections and Maintenance, Reserve Study Planning and Funding, Insurance and Risk Management. The Southeast Florida Chapter of CAI immediately launched a collection effort for those affected. The Coral Gables Community Foundation, the Miami Foundation, and the Key Biscayne Community Foundation established The Surfside Hardship Fund for area residents to contribute. The Greater Miami Jewish Federation established an emergency fund for short-term and long-term needs. The Miami Heat Charitable Fund worked with the humanitarian organization Direct Relief to raise funds to help survivors and first responders.

Personal tragedies closer to home and within our CAI-SoCo family have resulted in immediate cohesiveness and a tightening of our community to assist those we care about who are affected. In those moments, everything else falls away and we look to see how we can jump in and

assist or comfort each other. For a few days, weeks or months, the everyday annoyances don't seem to bother us as much as we remember how lucky we are to have not endured the tragedy firsthand. My hope is that instead of those initial feelings fading away so quickly, our mindsets and actions could permanently shift and we would all slow down a bit, see the good qualities in each other even if our opinions and views differ, and improve our communities one interaction at a time.

At our June Education Luncheon, Brandon Helm spoke on the topic of rethinking community. Brandon's talk elicited many positive feelings surrounding the word "community" and really hit home with me. As all of my manager friends and their colleagues can attest, community management is a very tough field. Reframing your mindset and looking for the good in a situation may provide the needed fuel to get you through a tough Board Meeting or Annual Meeting. Trying to get back to the root of the word "community" – fellowship, union, courtesy, affability – in our daily lives should bring about positive changes.



Enjoy the rest of your summer!

Tressa Bishop
2021 CAI SoCo Board President ♦



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desires of the owners making up the community and one of the best ways to reach community consensus is through these open discussions. Similarly, even though rules and regulations are adopted by the board, owners are expected to follow them and should have input into those rules. It is much easier to enforce rules when the community had the opportunity to participate in their development.

Apathy is a problem in many communities, which will impact any sense of community a Board tries to build. Unfortunately, it seems that apathy is often overcome only when an owner becomes upset with an association action and finds an effective way to communicate his viewpoint with the whole community. This can be very divisive to a community. CCIOA and associations' governing documents contain several provisions around transparency and owner involvement: open board and committee meetings, an owner's right to limited participation before the board votes, an owner's right to inspect and copy specific records, the right to a hearing, and owners' rights to ratify the budget to name a few. Knowing and respecting these rights helps reduce the initial misunderstandings that can result in major dysfunction in a community.

Proactive communication not only helps a board fulfill an association's transparency needs, but also is critical to managing a sense of community and avoiding or overcoming apathy. Proactive communication shows that owner involvement is important to the association and it is never too late to begin or enhance communication

efforts. This is a great tool for encouraging owner participation in the community and recognizing those who volunteer their time to serve the community. Seeking and encouraging owner involvement prepares future board members to take over.

Finally, if the last 18 months have taught us one thing, it is the importance of social connections. Most have spent more time than ever at home and, as telecommuting becomes more normal, we will continue to spend more time at home. If your association already has a good sense of community and neighborhood involvement, this is an opportunity to build on that. If your association has not focused much on the social aspects of community living, consider forming a social committee to help the board foster this aspect of the community. When owners know each other in a social and neighborly environment, they are more likely to work together to find common interests and a community consensus. Everyone working toward a common goal allows the board to more efficiently operate the business aspects of the community. ♦

About the Author



Lauren C. Holmes is co-managing partner at and one of the founders of Orten Cavanaugh Holmes & Hunt, LLC. She has provided general counsel and transactional services to community associations throughout Colorado for over 20 years.



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Bedrock or Sinking Sand?

By Lisa Waltman, Comfort By Design HVAC and Plumbing

Recently during a networking meeting, the discussion was raised on the multitudes of ways the past 18 months had and continues to impact our businesses and our community. The typical chats about the impact on the bedrock of our businesses and adjusting to survive were shared but what was surprising were the conversations about new successes.

Regardless of restrictions, everyone still needed a washer that washed, a sink that didn't sink through the floor from that undetected leak, computers that connected us and professionals that respected us. Throughout the daily operations of business even without a pandemic, those of us in the service industry are called to deliver a high standard of customer service. Some meet that standard while others fall painfully short. But during this particular time, the tiniest details of customer service became gigantic and the attention to them (or lack thereof) became a make-it or break-it situation. Many businesses reported unexpected growth during this time as the grass roots efforts of word-of-mouth advertising was alive and well.

When each client, home and circumstance become so unique during unknown times, honoring those details provides a sense of trust with the "stranger" in their home. The newly adopted dog, the at-risk individuals and unique circumstances within a household should always be respected but especially during such times when the unknown can be terrifying. Listening, understanding expectations and delivering what you promised became the bedrock of immense growth especially during uncertain times. Ignoring these and other customer service necessities simply became sinking sand.

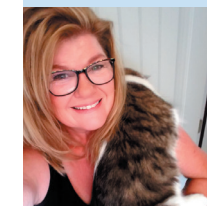
Many companies looked inward and assessed things such as: "Do I have the right partners to help build and support the company and the community? Am I happy with my role in the company/community? Is my company representing what my original vision was for the company and if not, is it better or worse?" Both owners

and employees asked themselves these and many other questions which led to tremendous upheaval in some companies and/or a platform of growth for others. The questions were necessary but could and would, keep us up at night; change was inevitable.

The general consensus is that the past 18 months has changed the way we all do business in our respective communities. Many processes previously thought essential for our businesses were found to be black holes of productivity. Eliminating those, we created more effective processes, sought out more productive employees and, in many cases, employees found more fitting positions elsewhere.

Now as we restructure and move forward, we hold each other accountable as a strong community does, in sticking to the re-formatted way of growing our businesses and helping others grow theirs. The process is painful; growing pains always are. But without the pain there is no growth and without the growth, greater levels are not achieved. In short, is the bedrock of your company simply a comfy bed or is it the solid rock upon which you and your community build? If the answer is unclear, the past 18 months have shown us so clearly that our personal and professional partners in our community are standing by to help find those answers. ♦

About the Author



Lisa Waltman is the Director of New Business and PR at Comfort By Design HVAC and Plumbing.



The Best Plans are Common Sense Plans

April Ahrendsen, CIT

“The definition of insanity is doing the same thing over and over again and expecting a different outcome.”

While this is a well-known quote from Albert Einstein, we all may have engaged in the futility of this practice. To combat this in our HOA businesses, we can adopt stronger plans that lead to positive outcomes.

Often, the best plans are simple and based on common sense. A solid plan consists of three pillars:

- Preserve
- Protect
- Enhance

Let's take a quick look at each one, starting with preserve. Think of your life, your job and your family. In any situation, we want to preserve the things that bring us lasting joy, the greatest pleasure, and when it comes to business, offer the best returns. In the HOA world, we want to preserve the practices that offer the same joy, pleasure and returns. A community resident would prefer to swim in a pool that is clean and well maintained, walk on grass that is green and plush, and, of course, live in a home free of leaks and other maintenance issues. The community benefits from a resident's joy and pleasure. When people are happy where they live, there are positive returns for the community. Happy residents pay assessments on time and attend community meetings creating communities where values are stable.

Protect is closely related to preserve and may be the pillar we are most familiar with. Though there will always be some risk with any plan, knowing the risks and mitigating them with protection, is common sense. Protect what is valuable, meaningful and may be difficult

to replace.

The final pillar is to enhance. Even small enhancements help preserve value, protect against loss, and bring meaningful returns. When things become worn and fall into disrepair, even minor adjustments or fixes can make a world of difference in perception and appreciation.

A community plan founded on common sense to preserve, protect and enhance the community provides positive returns including stable property values and residents who are happy where they live and experience joy and pleasure in their community. ♦

About the Author



April Lynn Ahrendsen is a vice president and regional account executive for CIT's Community Association Banking business, supporting property management companies and homeowner associations in Colorado, Idaho, Montana and Wyoming.

The views and opinions expressed in this article are those of the author and do not necessarily reflect the views of CIT.

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Community: The Treasured Intangible

By Ashley Douglas, Reconstruction Experts

If asked to recall our fondest memories in life, we often associate those memories with tangible places and things. Perhaps you have a favorite restaurant where you like to sit at the same table every time. Maybe you travel to the same destination every year where you've had great experiences time and again. The end of year holidays fill us with a sense of warmth so the phrase "It's the most wonderful time of the year" is used and we all immediately know what time of year people are referring to.

However, when we really think about it, it's not the place, the brick-and-mortar building or the season that has anything to do with the happiness we feel in those memories. When we experience that sense of joy, it's because in the moment we're recalling, we were feeling a deep sense of connectedness and community with those we were spending time with.

So, what exactly is community?

The dictionary lists one definition as a group of people living in the same place or having a particular characteristic in common. While accurate, most of us in the Community Association industry would agree that that definition only tells part of the story.

The deep sense of connectedness we experience comes from all of us bringing our own unique perspectives, ideas, and personalities to contribute to the collective environment known as community. Which is why I prefer the second definition of community-- a feeling of fellowship with others, as a result of sharing common attitudes, interests, and goals.

That's what makes what we all do with Community Associations Institute so important. The place we call home should be the place we feel most welcome and the deepest sense of community with our loved ones and neighbors. As Homeowner Leaders, Community

Association Managers and Business Partners, we all have an opportunity to cultivate an environment of long-term investment that contributes to the sustainability of the communities we serve. It's this singular focus that has allowed us all to continue to grow and thrive in our industry.

Reconstruction Experts, the company I work for, recently rebranded to focus more on what we all do every day which is build community. We've instituted the slogan "Love Your Place Again" because we want our clients to know that our focus is to partner with them in keeping their most precious asset at the forefront of our focus. That asset is of course the people and the collective intangible tapestry of community. ♦

About the Author



As the Vice President of the Colorado Region for Reconstruction Experts, Ashley utilizes her diverse experience to manage the overall success of her team in Colorado. She works closely with the senior management of each division within the company to ensure

that the RE's core values of Safety, Quality, Schedule, Cost and Communication are fully utilized in the procurement, planning and execution of each project. Ashley has worked at Reconstruction Experts for over 12 years serving in many different roles along the way. She has worked to develop lasting relationships with HOAs all across the Colorado region while restoring their homes and increasing their property values.



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2021 Events Calendar

(Dates Subject To Change)

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| Jan 12 Education Luncheon: January Jumpstart (VIRTUAL) | Sept 9 CLACsic Golf Tournament |
| Feb 9 Education Luncheon (VIRTUAL) | Sept 14 Annual Meeting Luncheon |
| Mar 9 Education Luncheon (VIRTUAL) | Sept 24 TopGolf Tournament |
| Mar 17 New Member Breakfast (VIRTUAL) | Oct 7 Business Partners Fall Happy Hour |
| Apr 13 Education Luncheon | Oct 12 Education Luncheon |
| Apr 17 Board Leadership Development Workshop | Oct 13 New Member Breakfast |
| May 11 Education Luncheon | Oct 16 Board Leadership Development Workshop |
| Jun 8 Education Luncheon | Oct 22 Bowling Tournament |
| Jul 16 Golf Tournament | Nov 9 Education Luncheon |
| Aug 10 Education All Day: Law Day | Dec 14 Year-End Celebration, Awards,
Install Officers & Charity Donation Event |
| Aug 18-19 .. CAI National Conference – Las Vegas | |



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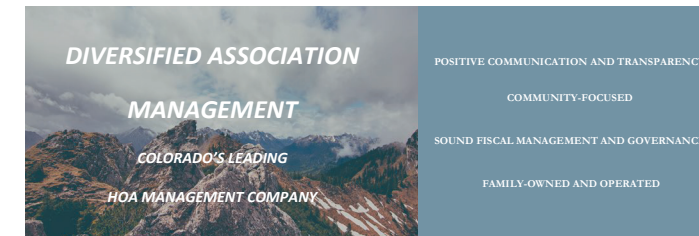
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