

CAI-Wisconsin Chapter

Community LEADER

News for the New American Neighborhood

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Community LEADER

News for the New American Neighborhood



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President's Message



Having served as our Chapter's President for the past two years, this is my last President's Message. These last two years have been a great ride and have given me the opportunity to work with some of the finest and smartest people in our industry. It has been a privilege to work closely with our Chapter's Board of Directors as well as our committees, which serve as the backbone of our Chapter. Given the strong foundations of our Chapter, I can confidently say that we are primed for continued growth and success.

As I pass the gavel, I ask that you please consider registering for our Annual Conference & Tradeshow, which is scheduled for Friday, March 9, 2018 at the Crowne Plaza Hotel (near the Milwaukee airport). This is our chapter's flagship event and this year we plan to give you "The Royal Treatment." The keynote speaker for the event will be addressing "Dealing with Difficult People" – which is certainly a skill that is important to all of us. There will also be several great breakout

sessions where you will gain great insight and knowledge from property managers, bankers, engineers and lawyers.

Also, thanks to our brand new website, online registration for the tradeshow will be easier than ever! Of course you can still register the "old fashioned way," but we welcome you to check out the Chapter's new website at www.cai-wi.org.

CAI is a fantastic organization that enables all of its members to improve their communities and their skills in serving those communities. The work that our members do is important and affects the lives of many people. CAI helps to provide the educational and networking opportunities to ensure that board members, property managers, contractors and the professionals that serve this industry can do so to the best of their ability. Thank you.

Adam S. Bazelon

Adam S. Bazelon
CAI-WI President

SAVE THE DATE

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WINTER AND COLD

STOP WINTER AND COLD WEATHER DAMAGE!

By Matthew Martin, Marketing Manager - Reserve Advisors, Inc.

Has your Association experienced ice damming, drainage issues or water damage as a result of winter weather? Being proactive and taking preventative measures helps to minimize the risk of costly destruction of an Association's common elements caused by freeze-thaw cycles. Although many issues that arise throughout winter are generally rehabilitated in spring (marred landscaping, broken fencing), items that might impact the integrity of structural components or are considered a safety hazard should be addressed as soon as possible.



Ice dams are a common problem throughout winter. Ice dams should be addressed quickly, as they could lead to significant structural damage to gutters and shingles, as well as to building envelopes. The removal of ice dams is best left to a professional contractor. Upon proper removal, you may consider having heat tape or cable installed along the bottom of the roof to help minimize the risk of future ice dams. Also verify that attic spaces are property insulated and ventilated. Heavy snow from sloped roofs should also be removed with a plastic roof rake. Be careful not to damage landscaping located near building foundations when removing snow. Removing heavy snow reduces the

stress on roofing structures and minimizes the risk of ice dams when winter experiences freeze-thaw cycles.

Another issue that homeowners and Associations might come across this winter is inadequate snow removal around high foot traffic areas. Snow should be removed from sidewalks and mailbox areas, and de-iced as needed to ensure homeowner safety. Guidelines as to when snow is to be removed should be clearly listed in your Association's snow removal contract. It is important to notify the board or property manager of issues regarding problem areas. If not included in a snow removal contract, sidewalks and mailbox areas should be added to an existing contract.

Improper drainage can become a winter issue as well when the snow begins to pile up. Blocked storm drains and culverts won't allow snow melt to drain properly, possibly leading to icy pavement or street flooding when warmer weather arrives. Remove snow and ice from storm drains and culverts, and avoid piling snow around these areas in the future.

Improper drainage of gutters and downspouts can also be hazardous. If snow melt from your downspouts is draining onto pavement, redirect the flow of water. Add an elbow and extension to the bottom of the downspout as a temporary fix.

Frozen downspouts can also cause significant damage to a property. Ignoring frozen downspouts can contribute to ice damming. Improper drainage can also result in water



spilling over gutters onto the pavement below. Contact a local contractor to thaw out frozen gutters and downspouts and to take preventative measures to avoid reoccurrences. Avoid piling snow in these areas.

Also be sure to protect your water supply lines from extreme cold. Pipes located in unheated areas (crawl spaces, attics, garages, etc.) should be insulated for protection. Consider installing polyethylene tubing or heating cable to exposed piping. During extreme cold, open cabinet doors under sinks that are adjacent to exterior walls.

If your home or Association experiences any of the above issues this winter, take immediate measures to eliminate safety hazards and items that could impact the structure integrity of your property. Ignoring such issues and hoping that they will go away will surely lead to more costly problems and repairs in future years. Also invest some time this spring to evaluate long-term solutions for addressing each of these issues that you experience.

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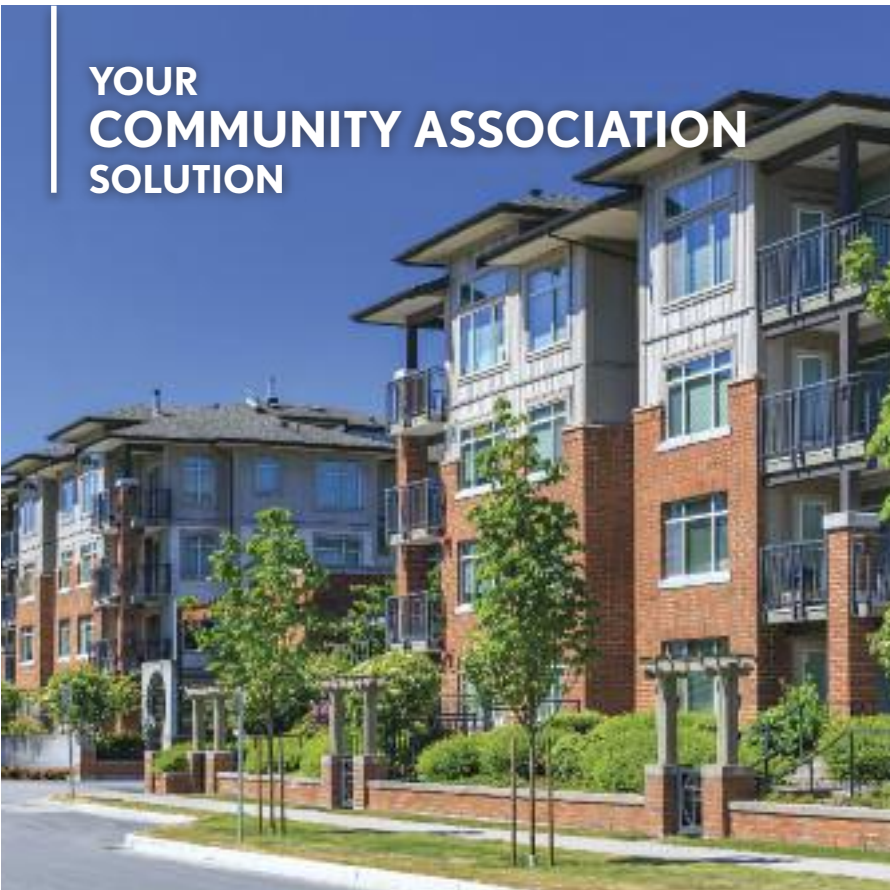
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TAX RETURN

DOES YOUR ASSOCIATION NEED TO FILE AN INCOME TAX RETURN?

By Steven Silberman, CPA and Partner of FSB&W LLC

The question that I have been asked most often over the years is: Do we need to file an income tax return since we are a not-for-profit corporation? Most associations are usually incorporated as a not-for-profit corporation, however, they generally do not qualify for federal income tax exempt status. Residential condominiums, townhomes, and homeowners' associations may be taxed under Internal Revenue Code (IRC) Section 277 or may elect to be taxed under IRC 528. Under IRC Section 277, associations file Federal Form 1120 and under IRC 528, associations file Federal Form 1120-H. An association can decide annually which form it would like to file, so let's discuss which form is right for your association and the differences between each form.

FEDERAL FORM 1120-H

Federal Form 1120-H was developed so that associations would not be taxed for carrying out its main function of managing and maintaining the common elements. Commercial condominium associations cannot file Federal form 1120-H. IRC Section 528 states that income and expenses must be allocated between exempt function activities and non-exempt function activities. Associations are only taxed on its net non-exempt function income at a Federal Tax rate of 30%. (Timeshare Associations are taxed at a Federal tax rate of 32%), so what is exempt and non-exempt function income?

Exempt Function Income is operating income received as assessments from owners of condominium, tonhome or homeoners' associations. They also can be assessments received from developers on unsold units or lots. These assessments must be assessed ratably to be exempt function income.

Non-exempt Function Income (or taxable income) is:

1. Income from non-association property such as commercial operations, interest and dividends.
2. Income from non-members for use of association property.
3. User charges to association members for special services unless the user charge is assessed once in a twelve month period and the benefit lasts for the entire twelve month period. An example of a user charge is laundry income.

The advantages of Federal Form 1120-H are as follows:

1. Associations are not taxed on exempt function income.
2. The tax form is a one page form, with supplementary schedules, so it costs less to prepare.
3. The form has less risk associated with it than Federal form 1120. There are four test that have to be met to file Federal form 1120-H, but most residential associations will qualify.
4. Fund accounting is not required since capital or reserve assessments are not taxed.
5. No election forms are required like on Federal form 1120.



6. As long as you continue to file Federal form 1120-H, no estimated taxes are required.

FEDERAL FORM 1120

The key advantage of Federal Form 1120 is that an association could pay tax at a lower rate than Federal Form 1120-H. For 2017, income tax rates for corporations start out at 15% on the first \$50,000 and under the new 2018 tax law, corporations are taxed at a tax rate of 21%. Even though the tax rate is lower, the risk of compliance is far greater since an association must follow certain required procedures. Also, since the form is much longer and more complex it costs more to prepare than Federal Form 1120-H.

IRC Section 277 states that income for Federal Form 1120 should be allocated between membership and non-membership income. An association can be taxed on both if there is net income, however, an association can make an annual election to defer net membership income.

Revenue Ruling 70-604 allows associations to defer net membership income for one year, however, if the association has net membership income in the next year then the association would have to pay tax in the next year on the deferred income. An association can also make an election under Revenue Ruling 70-604 to refund net membership income. A question that I get asked about all of the time is: Can our association transfer excess net membership income to

TAX RETURN CONT.



reserves and then not have to pay taxes on this excess? The answer is NO if you are filing form 1120. IRC Section 118 states that an association cannot transfer excess net membership income to reserves to avoid paying taxes since you cannot re-characterize what the assessments were for originally. In order for Revenue Ruling 70-604 to be valid, the election has to be made annually by all members (usually at the annual meeting) and it should preferably be made before the end of the year. The dollar amount does not have to be specified. One last point, please review your bylaws and declaration to see if they state what your association should do with excess operating income.

Capital Contributions (reserve assessments) will be treated as non-taxable on Federal Form 1120 if certain guidelines are followed:

1. The purpose of the assessment must be capital in nature. The reserve study supports the purpose of the capital assessment. However, painting even if it was included in your reserve study, is an operating assessment, not a capital assessment.
2. Members must have advance notice. Distributing copies of the budget to the members is considered advance notice.

3. The assessment must be accounted for as a capital contribution and held for that purpose. The books and records, along with the budget should segregate operating and reserve (capital) activities. Therefore, the association should use fund accounting.
4. Reserve (capital) assessments should be deposited into a separate account and reserve expenditures should be paid out of this separate account. An association can pay for capital expenditures out of the operating fund account as long as the reserve account reimburses the operating account in a relatively short period of time, preferably in the same month.

Now that you have a brief understanding of the two forms, you might be wondering which form should your association be using? This is a hard question to answer unless your CPA knows the facts and issues associated with your association.

Usually if your association has little interest income and no (or minimal) user fees, you will file Federal Form 1120-H. As interest income grows, your association should look at filing Federal Form 1120 as an alternative. If your association has minimal

interest income, but you have a net loss from your net membership (for example due to a painting project) you may want to file Federal Form 1120 since the loss gets carried forward. If your association files Federal Form 1120 because of the large amount of non-membership income, you want to make sure that you do tax planning ahead of time to minimize your net membership income.

You now should have a better understanding about the different types of Federal income tax returns and which federal income tax return is right for your association.

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VIOLATIONS

FINING FOR TENANT VIOLATIONS? YOU MIGHT BE DOING IT WRONG

By Lydia J. Chartre, Esq. CCAL.

You might think that when a tenant breaks a rule, that you can simply fine him like you would fine an owner-occupant. Or, you might think that you can just notify and fine the owner/landlord for his tenant's violation, since he'll ultimately be responsible for the fine anyway, right? These assumptions are intuitive; however, anyone who has been around condominiums and HOAs long enough can tell you that the laws governing them are not always intuitive. In fact, sometimes it seems like the legislators threw common sense right out the window!

That is not necessarily the case here, but

it is important to know that in Wisconsin there is a statute that speaks directly to how condominium associations are to go about assessing fines for violations to tenants—and if you do not follow the statute to the letter, your fines will most likely be unenforceable. The statute involved is Wis. Stat. Section 703.24, "Remedies for violations by unit owner or tenant of a unit owner."

You can see from a quick glance at the statute that fining a unit owner who commits a violation is a much simpler process than fining a tenant who violates. Section 703.24(2) addresses unit owner violations, and simply says that "A unit owner who commits a vio-

lation is liable for any charges, fines, or assessments imposed by the association pursuant to the bylaws or association rules as a result of the violation and may be subject to a temporary or permanent injunction."

If a tenant is the one violating the rules, however, the much-more-involved subsections (3) and (4) of the statute apply. Here is what you need to know: a) In order to ensure that the unit owner is ultimately responsible for fines for tenant violations, you must comply with the notice requirements of the statute.

b) To comply with the notice requirements of the statute:



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VIOLATIONS cont.

FINING FOR TENANT VIOLATIONS? YOU MIGHT BE DOING IT WRONG

By Lydia J. Chartre, Esq. CCAL.

- i. Your letter must state “the amount of charges, fines, or assessments for which the tenant is liable.”
- ii. Your letter must state that “if the tenant fails to pay the association the amount for which the tenant is liable within 30 days after the tenant receives the notice, the owner is liable to the association for the amount unpaid by the tenant.”
- iii. Your letter must be sent to BOTH the tenant and the unit owner/landlord, and it must be sent via registered or certified mail to both. (There are other acceptable delivery methods mentioned in the statutes, such as “personal delivery,” but doing so leaves you no written record – that is why I’d recommend going the registered/certified mail route. I would also recommend that you send a copy to the tenant and owner via regular mail, just in case they refuse to pick up the registered/certified copy.)

As implied in Section 703.24, if you follow the above steps, the Association can hold the unit owner responsible for the tenant’s fines if the tenant fails to pay them within 30 days. That means that the Association also secures its rights to lien the unit owner’s unit for unpaid fines, and ultimately foreclose if both the tenant and owner/landlord continue to ignore the notices.

Author: Lydia Chartre is a partner with the firm of Husch Blackwell. She is a member of the Real Estate, Development & Construction team, concentrates her practice in the areas of condominium law and homeowners association (HOA) law, commercial litigation and collections, and creditors’ rights.



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TOWN HALL & BOARD MEETINGS

UNDERSTANDING THE DIFFERENCES OF TOWN HALL MEETINGS AND BOARD OF DIRECTORS MEETINGS

By Victoria Cohen Consulting, Homeowner Associations

Town Hall Meetings:

Town Hall meetings are generally held as an opportunity for the Board, Homeowners, and sometimes industry experts (roofers, construction consultants, engineers, lawyers) to discuss specific topics, in a more casual and conversational manner (as compared to a formal Board Meeting). Town Hall meetings are not an opportunity to vote on specific topics.

Does a Town Hall meeting need to be Noticed?

- Yes, a Town Hall meeting must be Noticed if a Quorum of the Board is present. Logic assumes that the board members will be present because they want to engage in dialogue with the membership.

What is the format of a Town Hall Meeting?

- The President should chair the meeting, but in a significantly less formal manner.

Does a Town Hall meeting require meeting minutes?

- If a quorum of the Board is present, yes, you must take minutes, but the minutes will be minimal because there will be NO board action (votes) at a Town Hall meeting, because it is NOT a Board Meeting. The minutes will just state that a Town Hall was held, on <insert date> and maybe include a list of general topics discussed. Sometimes the Town Hall has a specific topic (water sub metering), or sometimes it is just an opportunity for the homeowner's to come to the Board with their complaints, comments, and compliments.



- Town Hall Meeting Summary: During multiple Town Hall meetings for a proposed CC&R amendment to permit sub metering of the water utilities, I took notes based on the information provided by the speaker/presenters, and prepared an informational letter to the homeowners. Management and board reviewed the letter, and once approved, the letter was distributed to the homeowners. This provides information, transparency, and communication; the things most homeowners want from their Board of Directors.

Board Meeting:

A meeting of the elected representatives of the homeowner association, for the purpose of conducting corporate business.

- In compliance with California Civil Code, the Board must provide an opportunity for homeowners to speak to the Board concerning agenda and non-agenda items.

- The Board may (should) limit time per speaker, and limit overall time allotted for homeowner forum. If there is a hot topic, consider allotting more time for homeowner forum, or

schedule a Town Hall meeting.

- In California, the Board cannot take actions on non-agenda items brought up by the homeowners, except to direct management to place onto the next month's agenda. There are minimal exceptions, for example, Board may direct management to follow up with the homeowner and report back to the President, if the item appears to be of an urgent nature. NOTE: Even if you do not live in a state that restricts action on non-agenda item, here are reasons to not engage in back-and-forth dialogue with the homeowners: #1 The Board does not have all the information they need to evaluate and respond to the homeowner concerns. Uninformed decisions are bad decisions! #2 You end up in a non-productive cycle of back and forth arguments that extends the meeting, and usually to little resolve. Insist the homeowner send their concerns to management, in writing, for inclusion in the next board packet. This gives management an opportunity to gather the needed information and for the Board to review all the information and make an informed decision.

TOWN HALL & BOARD MEETINGS CONT.

PARLIAMENTARY PROCEDURE:

- Most governing documents include language pertaining to the conduct of meetings in a recognized form of parliamentary procedure.
 - In California: Article 3 Member Meetings section 5000 (civil code) - (a) Meeting of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt.
- What does that mean in plain English?
- The Chair must know (or learn) how to control the meeting.

All members need to be recognized by the Chair before speaking. Remember when we were children and our parents told us not to interrupt? Remember when good manners dictated that we not interrupt people while they were

speaking? That is how your meetings should be conducted!

Be POLITE. It actually feels good to be polite, once you get used to it!

TIP: Create a timed agenda. (This means you put times next to each agenda item, thereby limiting the time for debate). If debate is not concluded when the time arrives, call for the vote, or vote to postpone the item until the next month's agenda. It is time to move to the next agenda item! As volunteers, you should not be subjected to long drawn out meetings!

Great Meetings Don't Just Happen; They Are Planned.



Victoria Cohen, Victoria Cohen Consulting, Principal. Victoria is an active member of Community Association Institute (CAI) at the local, state and national level. She served on CAI's Community Association Volunteer Committee (CAVC) for 5 years, serving as chair in 2012. Victoria served two years on the CAI Board of Trustees, 4 years on CAI's nominating committee, and two years on CAI's Government and Public Affairs Committee. Back home in California, Victoria has served as secretary for the San Diego Legislative Action Committee and currently sits on the CAI San Diego Chapter

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CONSISTENCY

CONSISTENCY IS A VIRTUE IN RULES ENFORCEMENT; EXCEPTIONS SHOULD BE LIMITED AND FAIR

By Janet Oulousian Aronson, Esq

Consistency may be “the hobgoblin of little minds,” as Ralph Waldo Emerson suggested. But it is also an article of faith for many condominium boards, who fear, and rightly so, that if they don’t enforce rules consistently, they may not be able to enforce them at all. Exceptions can all too easily swallow a rule. Owners will have little incentive to obey rules they see others ignoring without consequences. Inconsistent or selective enforcement can also expose associations to discrimination charges if boards punish minorities for infractions they regularly overlook in others. But there are some limited circumstances in which exceptions are reasonable, and some situations in which they may be required.

Before discussing how and if boards can make exceptions to rules, it is helpful to explain the scope and limits of a board’s rulemaking authority. That authority isn’t unlimited. In general terms, it stops at the threshold of owners’ units. Boards can govern the use of and behaviors in common areas through their rulemaking, but restrictions on how owners use their units and what they are allowed to do within them can be imposed only by amending the covenants or bylaws, which requires a supermajority vote of the owners. Not understanding this fundamental truth, some boards assume they can do anything they choose. Not so. For example, boards could adopt a rule barring smoking in common areas, but prohibiting smoking within owners’ units would require a change in the covenants or bylaws. Similarly, if the covenants permit pets, the board can’t adopt a rule that prohibits them or has the effect of doing so.

In one case that ended up in the courts, a board approved a rule that required owners to carry their pets in common areas. This created an obvious problem for the owner of a 90-pound dog, who sued because of it. The court rejected the rule, finding that it improperly restricted the ability to own a pet.

BOARDS CAN IMPLEMENT BUT NOT UNDO

Boards can’t negate or undermine a covenant, but they can adopt rules to administer it. Covenants can provide the underlying authority for adopting rules related to them. A few examples:

- If the condominium documents permit rentals, the board could not establish a minimum rental term, because that would affect how owners



use their units. But the board could adopt rules requiring owners to provide copies of their leases, governing the behavior of tenants, and establishing procedures for dealing with complaints about them.

If the bylaws prohibit commercial vehicles, a board rule could specify that the restriction applied only to vehicles above a specified size, or those with lettering on the exterior.



- If the covenants designate areas for guest parking, the board could specify how long vehicles can remain in this area before guests will be deemed to have over-stayed their welcome.
- With regard to pets, if the documents allow one pet per owner, the board could require owners to register and vaccinate their pets and clean up after them. These rules don’t impede the ownership of pets, they simply establish reasonable obligations for pet owners.

If a restriction on the use of a unit is found in the condominium’s declaration or bylaws, the board usually has little choice but to enforce it as written – unless (and this is a crucial caveat) a modification or accommodation is required under the Federal Housing Act to meet the needs of a resident with physical or emotional disabilities.

This is an area in which exceptions may be required. Even if the covenants prohibit pets, boards may have to waive that restriction as an accommodation for an owner who has a medical or emotional need to own one. Similarly, boards can’t prohibit owners from flying American flags (though they can regulate the size and location), because a federal law specifically establishes the right to display them. Federal law also requires boards to permit the installation of telecommunications equipment, while, again, allowing reasonable rules governing size and location.



Community LEADER



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EXCUSES!

Excuses, Excuses!

Association members who pay their assessments late or not at all come up with some very interesting excuses. Here's half a dozen of the most common, and why it's smart not to use them.

Excuse #1: "I didn't get what I paid for."

"My building hasn't been painted in five years! I'm not paying another cent until some basic maintenance gets done."

"The power was out for three days during the storm. I'm withholding a pro-rated amount from my assessment check."

You have a right to require the association to perform its duties, and various legal channels exist to accomplish this. Withholding assessments is not one of them. Your obligation to pay assessments has nothing to do with the association's obligations to provide maintenance and service. If you withhold your check or pay a reduced amount, you'll become delinquent, and that leads to late fees, and actually makes your situation worse.

Excuse #2: "You didn't bill me."

"I didn't get an invoice."
"You didn't tell me I was behind in my payments."

Many association governing documents neither require the association to send invoices nor provide advance notice of payments due or past due. However, associations are required to send the approved budget to each owner annually. When the Board/association approves and sends

the budget each year to members, it contains notice of the amount you must pay annually. If you're ever unsure about the amount or the due dates, contact your property manager.

Excuse #3: "You can't do that!"

"These people have no right to make me pay for neighborhood upkeep."

"If they think I'm paying those outrageous late fees and interest, they're crazy."

Actually, the association not only has the authority, it has a duty to all owners to collect assessments. This authority is established in the governing documents and the state's common interest ownership statutes. When you moved into a community association, you agreed to abide by those documents—and that includes paying assessments.

Excuse #4: "I never use the recreational facilities."

"I don't play golf, and it's an expensive game. I shouldn't have to pay to maintain the course."

"I've never been in the fitness center, and I don't plan to ever use it. Why can't you pro-rate my assessments accordingly?"

Admittedly, recreational facilities are expensive to operate and—for some associations—represent a good chunk of the budget. Nevertheless, most condominium documents specify that even if you don't use the association's amenities you're still obligated to pay for their upkeep.

Excuse #5: "I paid in full."

Sometimes the association receives a



check that says "paid in full" in the memo section—but it isn't. Or the check will arrive with a letter or note, stating the check is "payment in full," or it covers all charges through a certain date. Nice try. If you still have an outstanding balance, the association may not cash your check. It will return it to you. This will put you further behind in your payments and just cause more late fees.

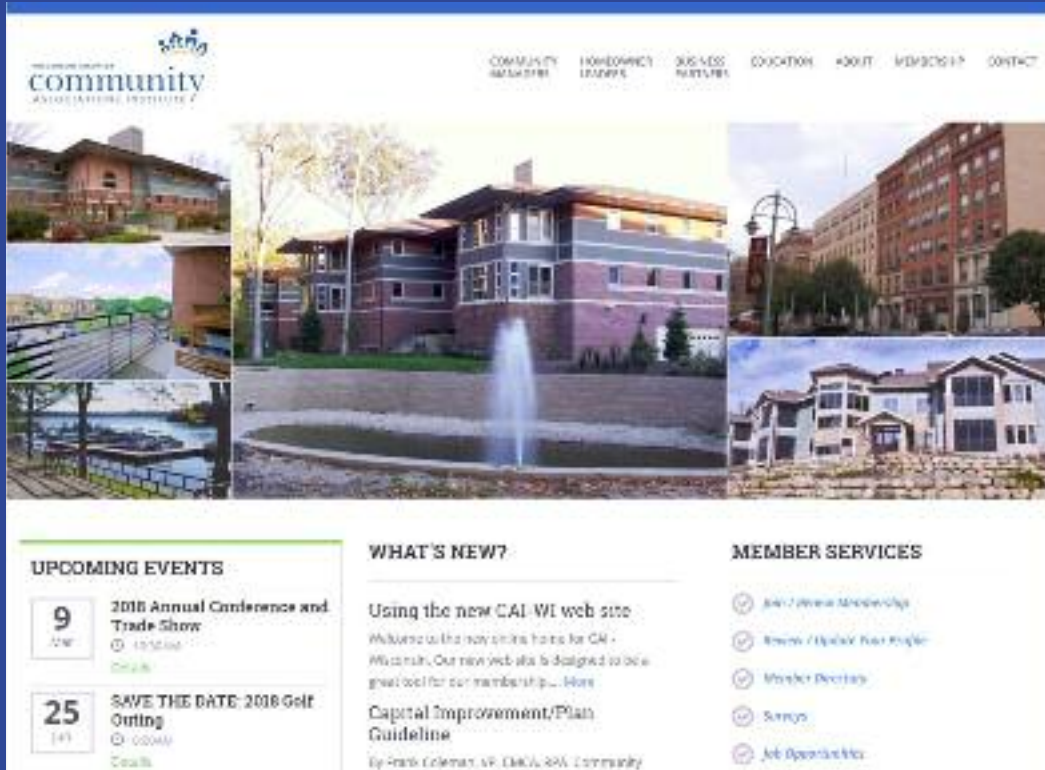
Excuse #6: "The fees are too high."

Assessments reflect the actual cost of maintaining all common elements in the community. If you owned your home outside the association, you would have to pay individually for all the same expenses your assessments cover—trash removal, water, landscaping, and so on. In fact, you're actually spending less on assessments because the association has bulk buying power, and you're getting more because the common areas provide amenities that you likely could not afford on your own.

Legitimate Reasons, not Excuses

When association members lose their jobs or become injured or ill, the association board understands that arrangements need to be worked out for paying assessments. If you have a legitimate reason for falling behind and you need to work out a payment plan, please call the manager. The board considers each situation individually, and will try to accommodate you special circumstances.

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