

Association of Condominium,  
Townhouse, and  
Homeowners Associations



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**June 2015**

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**Reimbursing Board Members**

By Scott Rosenlund of Fullett Rosenlund Anderson P.C.

Community associations occasionally consider engaging a member of the association's board of directors to provide services to the association. Depending upon the particular circumstances, such an arrangement can be appropriate. However, association boards should be aware of certain legal considerations before entering into transactions with directors. This discussion is limited to the engagement of directors to perform types of work normally handled by outside independent contractors and does not address compensation for fulfilling the duties of an association director or officer, license requirements for providing community association management services or legal requirements associated with hiring employees, rather than independent contractors.

First, both the Illinois Condominium Property Act ("Condominium Act") and the Illinois Common Interest Community Association Act ("CICAA") require disclosure of certain board member transactions. Subsection 18(a)(16) of the Condominium Act provides that a condominium board may not enter into a contract with a current board member or with a corporation or partnership in which a board member or a member of the board's immediate family has a 25 percent or more interest unless notice of intent to enter the contract is given to the unit owners within 20 days after the board decision to enter the contract is made. If a petition for an election to approve or disapprove the contract is signed by at least 20 percent of the unit owners and delivered to the association within 20 days after the notice, the election shall be held within 30 days after delivery of the petition. Under this provision, the term "immediate family" means the board member's spouse, parents and children. For associations subject to CICAA, Subsection 1-30(b) of that statute contains identical requirements, with the exception that Subsection 1-30(b) defines a board member's immediate family to mean the board member's spouse, parents, children and siblings.

Second, board members must appropriately handle conflicts of interest when voting. Condominium associations and non-condominium community associations organized as not-for-profit

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**ACTHA's  
FALL EXPOS**

**Sat., Sept 19—Northbrook**

**Sat., Oct. 3, Tinley Park**

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# Legislative Update

Newspaper and media accounts would have one think not much was accomplished in Springfield this year but in fact some legislation was passed affecting community associations. Below is a synopsis of the bills which passed or are likely to before year end. Once a bill is sent to the Governor, he has 60 days to take action.

A more detailed explanation of how each of these bills will affect associations will be carried in a future ACTHA newsletter.

**SB 1374** (Hastings/Burke), initiated by ACTHA, this bill requires associations formed as limited liability corporations (as opposed to non-profits) or subject to the terms of an “operating agreement” to comply with the protections under the Common Interest Community Association Act (CICA). This bill was sent to the Governor on May 31.

**HB 2460** (Cassidy/Steans) This bill initiated by the Chicago Bar Association’s Condo Subcommittee, includes an ACTHA amendment that clarifies the duties of a board to act in an emergency. The bill also includes other procedural changes to CICA. This bill is currently in the Illinois House on the order of concurrence and is expected to pass the General Assembly (most likely in the fall).

**HB 2642** (Cassidy/Steans) Another Chicago Bar Association bill, this deletes a provision in the law allowing an association board to change declarations, bylaws and community instruments independent from the consent of the owners. This bill is on the order of concurrence in the Illinois House and expected to pass before year end.

**HB 2643** (Cassidy/Steans) Also a Chicago Bar Association bill, this amends the Illinois Condominium Property Act (ICPA) by revising notice provision dealing with errors and amendments to association declarations.

ACTHA was also successful in opposing any changes to the current Illinois law impairing a condominium association’s ability to recoup expenses from unit foreclosures.

To review the full text of a bill and action on it, go to [www.ilga.gov](http://www.ilga.gov)

## Board of Directors

### Officers

**President:** Beth Lloyd    **Vice President:** Joe Fong    **Treasurer:** Bob LaMontagne    **Secretary:** Jacqueline Fanter

### Directors

Mike Matthews    Diane Pagoulatos    Myrna Santiago-Martinez    Ron Sirotzki

**Executive Director:** Gael Mennecke

**Lobbyist:** John Carr, Social Engineering Associates, Inc.

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corporations generally are subject to the Illinois General Not For Profit Corporation Act of 1986 ("Not For Profit Act"). Section 108.60 of the Not For Profit Act addresses director conflicts of interest. Under Subsection 108.60(c) of the Not For Profit Act, the presence of a director who is directly or indirectly a party to a transaction with the corporation or is otherwise not a disinterested party may be counted in determining whether a quorum is present at a board meeting but may not be counted when the board takes action on the transaction. Subsection 108.60(d) of the Not For Profit Act provides that, under most circumstances, a director is considered "indirectly" a party to a transaction if the entity conducting business with the corporation is an entity in which the director has a material financial interest or is an officer, director or general partner. In short, under Section 108.60, the director at issue should recuse himself or herself when the board votes on whether to hire the director.

Third, before engaging the board member, an association should consult with its insurance representatives to confirm that the director's activities will be adequately covered by workers' compensation insurance.

Finally, it is incumbent upon boards to remain cognizant of their fiduciary obligations and exercise reasonable business judgment in evaluating whether the director possesses the proper qualifications for the job at hand. In most cases, the benefits associated with hiring an outside contractor with specialized skills, knowledge, experience, credentials, equipment and other resources will outweigh the convenience of having a director provide the service.

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## CONGRATULATIONS TO LOU ANN TRUTY HUBER AND NEIL STOUT

Both recently completed ACTHA's certification program. This six module course highlights key points that all owners and board members should be aware of. **LEARN & LEAD** is available online (\$100 for ACTHA members; \$150 for non-members). Once registered one has two years to complete the program which requires a 70% pass rate on the exam offered after each course topic. For more information: [www.actha.org/certification](http://www.actha.org/certification) or call 312-987-1906

### PAYING MORE???

Does your association pay extra for services that your municipality includes in its tax bill for single family homes?

ACTHA is working to facilitate a group of associations which are paying extra from garbage pick-up to street cleaning.

If interested, please email [gael@actha.org](mailto:gael@actha.org) with the following:

NAME OF ASSOCIATION: \_\_\_\_\_

MUNICIPALITY: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

EMAIL: \_\_\_\_\_

PHONE: \_\_\_\_\_ # OF UNITS: \_\_\_\_\_

BRIEF DESCRIPTION SERVICES YOUR ASSOCIATION IS PAYING EXTRA FOR:

# Welcome New Commercial Members!

## **BEYER / KNEE**

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You indicate that you have spoken to the Association's manager about the problem. My suggestion is that you attend a board of directors meeting and personally raise the issue to the board of directors. You will have a chance to discuss the matter with the board and get the reasons for not wanting to trim the tree. Alternatively, they may not be aware of the problem. It is very important that home owners be involved in the association's business by attending board meetings. Your direct appeal may get the board's attention and get you a happy, not a sappy, resolution.

## **INTERESTED?**

If you are interested in becoming more involved with ACTHA—volunteering to assist at an event or on a committee, please let us know. Volunteers are important to organizations—they provide relevant input, ideas and energy.

Simply email [gael@actha.org](mailto:gael@actha.org) or call 312-987-1906

## Question of the Month

By: William Lapelle, Attorney

Northfield Plaza, Northfield / 847-441-0002 / [wlapelle@lapellelaw.com](mailto:wlapelle@lapellelaw.com) /  
[www.lapellelaw.com](http://www.lapellelaw.com)



**Q.** I own a townhome and pay to park my car in space outside the front of our unit. There is a common element maple tree dripping heavy sap onto my car. It gets so thick it won't come off with regular. I have asked the manager to cut some off the tree top but they will not (although they cut many other tree branches off for the whole development of 500+ homes). Would you advise on what options I have as an owner?

**A.** The “townhouse Statute” you are referring to is the Illinois Common Interest Community Association Act (765 ILCS 160) (the “Act”). The Act does contain requirements that your association bylaws: “shall provide for the maintenance, repair, and replacement of the common areas” (765 ILCS 160/1-30c). However, the Act itself does not specify what those duties are.

To determine what the manager and board’s duties are, you will need to review your Association’s declaration and by-laws. Most declarations will provide for general language relating to the maintenance of trees, but it is unlikely that the declaration will specifically provide for trimming trees to avoid sap dripping on cars.

A review of the General Not For Profit Corporation Act of 1986 (805 ILCS 105) is also necessary. The Not For Profit Corporation Act provides in part that directors are not liable for damages: “resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director or officer unless the act or omission involved willful or wanton conduct” (805 ILCS 105/108.70). Accordingly, if the Manager and the Board are acting in good faith by not trimming the tree, they are probably not violating any statutes or your declaration or by-laws.

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