

Vol. 40 • No. 3 • 2022

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# COMMON

## INTERESTS

THE 2022

# Insurance/ Ethics

ISSUE

**Devastation In Our Backyard**

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**5 Most Common Conflicts of Interest  
For Board Members**

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**Considerations For Self-Managed  
Associations**

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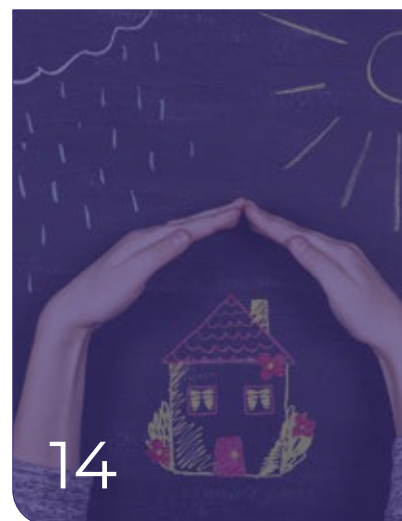
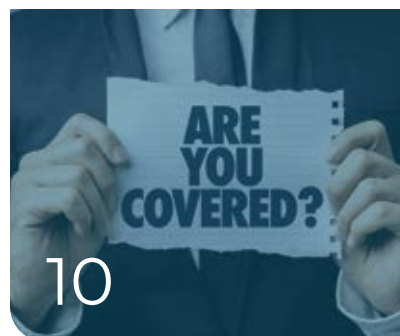
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**JEFF KUTZER,**  
**CMCA, PCAM**  
Chapter President  
CAI-RMC

## Rocky Mountain Chapter Members:

The start of 2022 continues to bring new challenges for our community associations, their volunteer board members and the professionals who serve them.

Our Chapter volunteers continue to work hard to provide up to date education as well as social opportunities for our members. The amount of hard work by volunteers that is going on behind the scenes to put on these events and operate our Chapter to benefit its members amazes me daily. I would like to take this opportunity to recognize and thank all the volunteer members and their employers for permitting them to provide their time to benefit our Chapter. This Chapter would not be the success it is without all of you.

This issue of our magazine will focus on insurance and ethics. The environment in which community associations and the professionals who serve them is ever changing. It is imperative that board members, managers and the professionals who serve community associations are able to keep up with how those external changes impact the how and why of decisions and actions for their communities.

Insurance for community associations has been in a state of change for many years. The Marshall Fire as well as the Florida building collapse in the past year have insurance carriers looking to change how they are providing insurance to community associations much as they did decades ago when many communities in Colorado had wood shake shingles on

the roofs. Our Chapter experts will help provide guidance so our community association board members and managers can work with their insurance professionals asking the right questions to insure they have the best coverage in place for their community.

Along with an ever-changing insurance environment, the financial, legal and other operational external changes are constantly impacting community associations. It is important for our Chapter experts to help provide our members with best practices to address the changes while maintaining ethical operations for the benefit of the members of each community association. It seems that House Bill 1137 in this last session was a direct result of what legislators felt was unethical practice in the community association industry. It is important for all members of our Chapter to understand all our actions can have a direct impact on how our industry is perceived by the public and/or our legislators. We, as the group dedicated to creating a strong and positive environment for all communications, should accept the challenge to always pursue improving the economic and ethical operations of community associations.

2022 seems to be a year in which our world, nation, state and even our local community associations will be facing continued challenges and a changing operational environment. It is only through the hard work of our members and the volunteers in our Chapter who help create our educational and social opportunities for the Chapter that we will help continue to move our community association world into a better future. ⬆



## Editorial Calendar

Issue	Topic	Article Due Date	Ad Due Date
August	Finance	06/15/2022	07/01/2022
October	Tech / Modernization	07/15/2022	09/01/2022
December	Planning Ahead / Goals / Community Vision	10/15/2022	11/01/2022



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An illustration of a man in a dark suit, white shirt, and yellow tie, with a beard and red-rimmed glasses. He has three arms, each holding a white object. Above his head is a yellow lightbulb with a blue lightning bolt inside. To the left are several grey gears of different sizes. The background is a solid red color.

# Considerations for **SELF-MANAGED** Associations

Many communities choose to undertake self-management in an attempt to minimize costs and assessment levels. This structure can make a lot of sense for certain communities, but if you're new to the Board, or unfamiliar with your obligations to your community as a Board member, you may quickly find yourself in over your head. Communities that are currently self-managed, and communities that are exploring self-management, should consider the following when making the decision to go it alone.

## Is it Permitted?

Your governing documents may actually require that you retain professional management. Particularly for condominiums, the Declaration might require you to provide notice to lenders before establishing self-management if you've been professionally managed in the past. If your community has historically been professionally managed, review your documents and check with legal counsel to make sure you don't run afoul of any management or notification requirements. If you are obligated to provide notice of this change to all the lenders in the community, your lawyer can help you navigate the process.

## Who's in Charge?

The Board typically acts as the executive branch of the community, and management implements the Board's policy decisions. When you undertake self-management, you need to decide who is responsible for actually completing the work. If the Board decides to retain a snow removal vendor, who reaches out to vendors to request proposals? Who reviews and communicates with the vendors? Who calls the vendor when a problem occurs? And when that person is on vacation? Your vendors don't want to hear from a dozen different people. Keep your lines of communication and chain of command clear.

While the President typically acts as the chief executive officer, you can't expect the President to do all the leg work. Clearly allocate responsibility amongst other Board members, or where appropriate, to a duly-designated committee. If you have a committee in charge of vendors, make sure you have clear boundaries for what the committee can, and cannot do. A thorough committee charter will help set expectations. Similarly, if your liaison is a Board member, make sure the Board member understands their boundaries. Major decisions, such as selecting a vendor and approving a contract, need to be made by the Board to protect individuals from personal liability. However, day-to-day decisions, such as approving the landscaper's reduction of irrigation in a location that is receiving too much water, are appropriately delegated to the representative.

**LINDSAY SMITH**

Winzenburg, Leff, Purvis & Payne, LLP

## Dollars and Sense

Financial management and transparency are crucial for community associations. If you do not have competent financial management, don't undertake self-management. Your treasurer needs to be experienced and able to account for Association funds using generally accepted accounting principles. The treasurer should know the numbers forwards and backwards and be able to explain everything to curious homeowners at a moment's notice. In addition, your financials need to be properly maintained to ensure your legal counsel can take necessary steps to collect. Keep in mind that if your ledgers are wrong, and the attorneys take action on those incorrect ledgers, the attorneys and the Association can face legal liability.

Many communities will retain professionals for "accounting-only" services. This is a good balance between the financial risks of self-management and the financial costs of full-service management. If you're considering self-management but are worried about accounting, ask your management company if they provide different service levels.

## Insurance

When you are self-managed, you need to rely more on the professionals who advise your community. Make sure you have a good insurance agent who truly understands your community's needs, risks, and how insurance works in your HOA. If your community was formed on or after July 1, 1992, or if it is required by the governing documents, you will have to carry property and liability coverage for the common elements and in most condominiums, on the units themselves. Even if your governing documents are silent on insurance, you should still talk to a broker and protect yourselves. Not all insurance is the same!

Don't look solely to the bottom line when selecting an insurance policy. Ask your broker whether the property policy will actually cover everything that needs to be covered if the community is destroyed. As we are seeing with the Marshall Fire, many homeowners are underinsured, whether due to a general misunderstanding of actual replacement cost, or due to a failure to carry sufficient coverage to address building code changes and the costs of removing debris.

Similarly, the cheapest Directors and Officers Liability policy isn't necessarily the one you want in place when the Association is sued. Ask your broker whether the policy covers all prior acts, what is included and what is excluded, and how much the insurer will pay in a worst-case scenario lawsuit. Will the policy cover discrimination? What about a judgment if you lose? Your policy will include a date for "prior and pending litigation." Make sure this date stays the same across new policies to avoid a gap related to when a claim is filed. You want to make sure your D&O policy will cover all prior acts.

Finally, management companies can do a lot of good when it comes to vetting vendors and avoiding unscrupulous contractors. Many management companies require vendors submit proof of insurance before the manager will even entertain work by the vendor. When you're self-managed, you may miss this step or not think about it until problems crop up. If a bad vendor has forged a certificate of insurance or allowed a policy to lapse (and this can happen regardless of management's diligence), the Association can be left holding the bag. Carry worker's compensation insurance to protect against the risk of an injured worker, and consider checking on the Colorado Department of Labor and Employment website to verify the vendor's worker's compensation policy is not lapsed.

## Reliance, Business Judgment, and Blame

The Colorado Revised Nonprofit Corporation Act provides the general standards of conduct for directors. These standards apply whether you are self-managed or professionally managed. Directors need to discharge their duties in good faith, with the care an ordinarily prudent person in similar circumstances would exercise, and in a manner the director reasonably believes to be in the best interests of the corporation. Directors are entitled to rely on the advice and opinions of professionals in discharging their duties, so relying on the advice of a seasoned manager can help a Board that finds itself in litigation establish its reasonable business judgment. Of course, managers cannot provide you with legal advice and are not engineers, but they can help spot issues that you might not even recognize - such as changes in the law - which can help you avoid unseen dangers.

If you are self-managed, you may find yourselves reaching out to your accountants, engineers, and attorneys more often for advice to help ensure you are acting reasonably and prudently. Make sure you consider these additional needs as you budget your time and money. You should also plan to take educational classes that may be offered by CAI or other industry partners.

*continued on page 8*



One underappreciated aspect of professional management is that a manager's actions help to insulate a Board from angry neighbors. No one likes being towed, or receiving a violation letter, and if a Board member has to tow someone from a fire lane, that Board member might receive a knock on the door late at night. Management can help redirect this improper anger (don't park in fire lanes!), and protect the Board member from personal conflict. Board members have to wear multiple hats when a community is self-managed, and when one of those hats is labeled "Enforcement," heavy is the head that wears the crown. While no one has the right to abuse or make personal attacks as a result of proper enforcement activities, angry homeowners may still act irrationally. If you're considering self-management, ask yourselves whether you are likely to face this kind of interaction, and whether you and your community would be better off with the homeowner leaving a message for a professional who is trained in this sort of interaction - and who isn't a next-door neighbor.

## Is it Worth It?

If your community has minimal maintenance obligations, is reasonably harmonious, and has owners who are willing to follow the rules, you can probably undertake self-management. At the end of the day, however, Boards are full of volunteers who have other obligations that are almost certainly more compelling than comparing different insurance policies and preparing letters to owners with pink houses. Legal requirements for community association governance require more sophistication every year. While you may be able to undertake self-management with your current Board and existing challenges, it's common for the additional workload to burn out volunteers more frequently. If something goes wrong - a major insurance claim, a lawsuit, an unexpected move - you may find yourselves scrambling to retain professional assistance. Be realistic in evaluating your capabilities and your community's needs, both now and in the future. While everyone wants to save money, the costs associated with self-management may exceed the dollars saved. ⬆



*Lindsay Smith is a partner at Winzenburg, Leff, Purvis & Payne, LLP, where she focuses on general community association law, enforcement, and governance. She is also a volunteer for and the current Chair of the CAI - Colorado Legislative Action Committee. Many thanks to Wendy Weigler, Brad Henderson, and Marci Achenbach for their assistance in this article.*

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# DEVASTATION

## IN OUR BACKYARD



Growing up in Louisville, Colorado, I like many others, could have never imagined the scene that unfolded on December 30, 2021. Early in the day a staff member mentioned a small brushfire had started in Boulder. Miles away we went on with our day only to see what looked like dust in the air around 11am. By 1pm the fire was roaring, coming up the hill towards Superior. As the winds shifted, the devastation that unfolded was nothing short of unimaginable. In what seemed like only a matter of minutes, more than 1,000 structures were lost along with decades of memories and only charred remains littering the landscape remained.

This is what insurance is designed to do. To help when the unthinkable happens. To come to the rescue on the brink of financial ruin. With this fire just behind us and years of rebuilding still to come, what can we learn and do to help if the unthinkable happens again?

The biggest asset for most associations is the buildings themselves. Many people found, during the fires, that they were significantly underinsured. It is critical that associations review their current building coverage amount and work with their agent in determining a value that the association is comfortable with. The agent should be able to help provide input and explain how they arrived at the suggested limit. With the ever changing cost and rising inflation this is not a perfect science. If an association is underinsured at the time of the loss, they have a few options to cover the shortfall such as using reserve funds, taking out loans or assessing owners. This is never ideal and hopefully by reviewing the limit you can reduce this exposure from happening to your association.

When looking at building coverages it is common to see policies come in three main coverage options.

1. Guaranteed Replacement Cost which pays the full cost to replace the property even if it exceeds the policy limits. An important caveat typically applies to this provision that requires the association to insure to replacement cost (and update the amount when any improvements are completed) for the coverage to be triggered at the time of loss.
2. Extended Replacement Cost extends the limit in the event of a total loss to provide additional coverage by a set percentage. This generally follows the same requirements as Guaranteed.

## A look at insurance and what we can learn from the Marshall Fire

**DEVON SCHAD**  
Schad Agency



*Devon Schad is the current Chair of Marketing and Membership for CAI Rocky Mountain Chapter, an Educated Business Partner, and owner of the Schad Agency. The Schad Agency specializes in insuring association and has been since the family founded the agency in 1976.*

3. Agreed Value which gets rid of any coinsurance provision by the company and the insured agreeing to the maximum limit for a schedule of property values. Since each item has a specified limit, it becomes more important to review since there is less margin for error. An option is Blanket coverage, which would allow the total limit to be used for any building that suffered damage. However, this is becoming increasingly difficult to secure on Agreed policies and often is not available regardless of price.

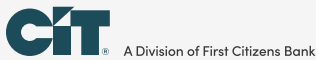
One item of note is coinsurance, and not to be confused with the same word used in health insurance, as property coinsurance works a little differently. Coinsurance is a provision that penalizes the insured if the limit of insurance is not equal to or greater than the specified percentage. The higher the percentage the more likely a penalty will happen from a loss. A quick example is the coinsurance percentage is 90%. A building replacement value is \$1,000,000 and the client only carries \$800,000. A fire does \$300,000 of damage. Since the insured was under the required coinsurance \$800,000 vs. the \$900,000 required (90% of \$1,000,000), the insurer will add a penalty ( $\$800,000/\$900,000=.889$ ). Even though the association's loss was \$300,000, the insurer will only pay \$266,700 minus their deductible ( $\$300,000 \times .889$ ).

Reserve studies can also help the association and their agent account for items that are owned by the association and give some ideas on their replacement cost. This helps provide a greater roadmap for coverage requirements but should not be the only thing utilized. Many items may fall outside a traditional reserve study such as trees, plants and shrubs, roadways, etc.

After a loss, monthly assessments may need to stay the same or close to since often most of the cost associated with the association do not go away. Owners should purchase loss of use coverage that would keep their total cost before the fire the same after the fire. Business income or loss of dues may be added to policies to help collect for uncollectable assessments and/or loss of income if parts are rented to others.

Knowing who is responsible for what prior to a loss will help alleviate conflict at the time of a loss. Having a maintenance and insurance chart that clearly defines responsibilities between owners and the association should help accomplish this.

Lastly, every policy is different, and insurance is nowhere near perfect. Many policies today exclude or limit coverage for foundation, underground pipes, roadways, outdoor property and others. Be sure to spend the time with an educated, experienced agent that can uncover the pitfalls and recommend coverage options. 🏠



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Member  
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# Claims Confusion Clarified

TRESSA BISHOP, MBA, CIC, CIRMS  
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A manager or Board member's role within the community association requires many, many hats be worn at various times. One of the more stressful parts of working within a common interest community is assisting in times of crisis, whether it be involving one owner/member or the entire community association. If you've managed or volunteered within a community for any length of time, chances are you've encountered a situation where the insurance carrier has had to be notified of a claim or a situation that may give rise to a claim. Here, we'll discuss the best way to handle various claims situations with the goal being the most positive outcome possible for the association.

Property claims, such as when a fire or large water loss occurs, are the most common type of claim and, for the most part, are more 'cut and dried' as far as when to notify the carrier. If the loss originates within a unit, that owner should immediately notify their personal insurance carrier of the loss and begin the mitigation process (cleaning up the damage and preventing additional damage from occurring). Unless there is a specific property form stating otherwise, most commercial property policies follow the governing documents in place at the time of loss as far as coverage on the interior of the units. Many Board members assume that the association's policy does not cover interior unit damage which leads to confusion and unnecessary delays following a property loss. Occasionally, this can ultimately lead to a liability claim as the owner assumes the association is trying to skirt

their responsibility, yet the Board truly doesn't think the association has any responsibility for the interior of the unit following a loss.

**Any time there is a loss, we recommend reaching out to the insurance broker immediately for assistance and to clarify the responsibilities of all parties.**

As soon as it is known that the property loss, including mitigation and estimated repairs to get the property to pre-loss condition, will exceed the policy deductible but before the repairs are made, the property carrier should be notified. The association's insurance adjuster and the owner's insurance adjuster will work together to ensure each policy is covering the appropriate parts of the claim. Both parties have a right to inspect the damage before repairs are made, so it's important to allow this to occur before any repairs are made. Typically, the association's adjuster will issue an Actual Cash Value (ACV) payment early in the claim process (this is calculated as the agreed upon claim amount/scope, less the policy deductible and less the holdback depreciation amount for the damaged property - don't worry, they will pay this amount once proof of all repairs is provided). The unit owner's carrier, if required by the governing documents, will pay the association's policy deductible (less the owner's personal policy deductible) and for any part of the damaged real property that is required by the governing documents. Once all repairs are



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made by the owner's contractors and final invoices are received, the association's adjuster will release the holdback depreciation amount and the claim should be paid in full. The unit owner will expect that the association forward both the initial ACV payment amount and the holdback depreciation payment amount so they can pay their contractor(s) for the agreed upon claim amount/scope.

Liability claims can be a bit more confusing and have increased significantly over the past few years within common interest communities. General liability (GL) claims occur when there is bodily injury or third-party property damage (property not owned by the association). The most common type of claim we see filed under the GL policy is due to a slip and fall or trip and fall. When the manager or Board is notified that someone has been injured on association property, there is a possibility of a GL claim forthcoming. Sometimes, the injured person simply reaches out to notify the association so they can correct a problem and ensure that no one else is injured but they aren't actually making a claim (not asking for medical bills to be covered nor monetary damages from their injury). Even in this situation when a claim is not being made, we recommend an injury report be taken with as many specific details as possible (exact location, weather conditions, witness information, and other pertinent details). If a claim is made at a later time, all of this information will be needed. We recommend notifying your insurance broker when you first become aware of the accident even if a claim is not immediately being filed.

There are times when an injured party sends a small medical bill for payment. As tempting as it may be to simply pay the bill to get it to 'go away' and avoid a claim being filed on the association's GL policy, please do not do this. The association's GL policy has certain reporting requirements and, while you believe that it is just a small amount and will quickly go away, if the association makes the payment they may be jeopardizing coverage altogether should a larger claim or lawsuit rear its ugly head down the road. Reach out to your insurance broker or agent right away so the carrier can be notified.

Occasionally, a letter of representation is received and the manager or Board has no idea who the person is nor were they previously notified of the accident being reported. Again, reach out to your insurance broker or agent right away so the carrier can be notified and respond on the association's behalf. The policy which was in place at the time of the accident/occurrence will be the one to respond.

For allegations of wrongful acts by the Board, manager, committee members or other volunteers, the professional liability policy carrier (also referred to as Directors & Officers liability policy) will need to be notified right away. Since most professional liability policies are written on a 'claims made' policy form, the carrier that is in place at the time the claim is made or that there is reason to believe that a situation may give rise to a claim must be notified to ensure defense and coverage (if applicable based on the policy exclusions and limitations). Reach out to your insurance broker or agent right away so the carrier can be notified. Unlike the property and GL carriers, unless a claim is being made by the party alleging the wrongful act, professional liability adjusters will generally note their file and follow up with the insured to see if a claim develops over the coming weeks.

There is no getting around the fact that insurance claims are tricky, policies respond differently depending upon coverages, exclusions and limitations, and no two claims are exactly alike. Even if one association's claim appears to be similar to another's on the surface, they may be handled very differently by the two different carriers depending upon the policy's insuring agreements and the facts at hand.

**One thing is for certain: do not go it alone.**

Work closely with your insurance broker or agent right away to ensure the association doesn't inadvertently jeopardize coverage by assuming anything. ⬆



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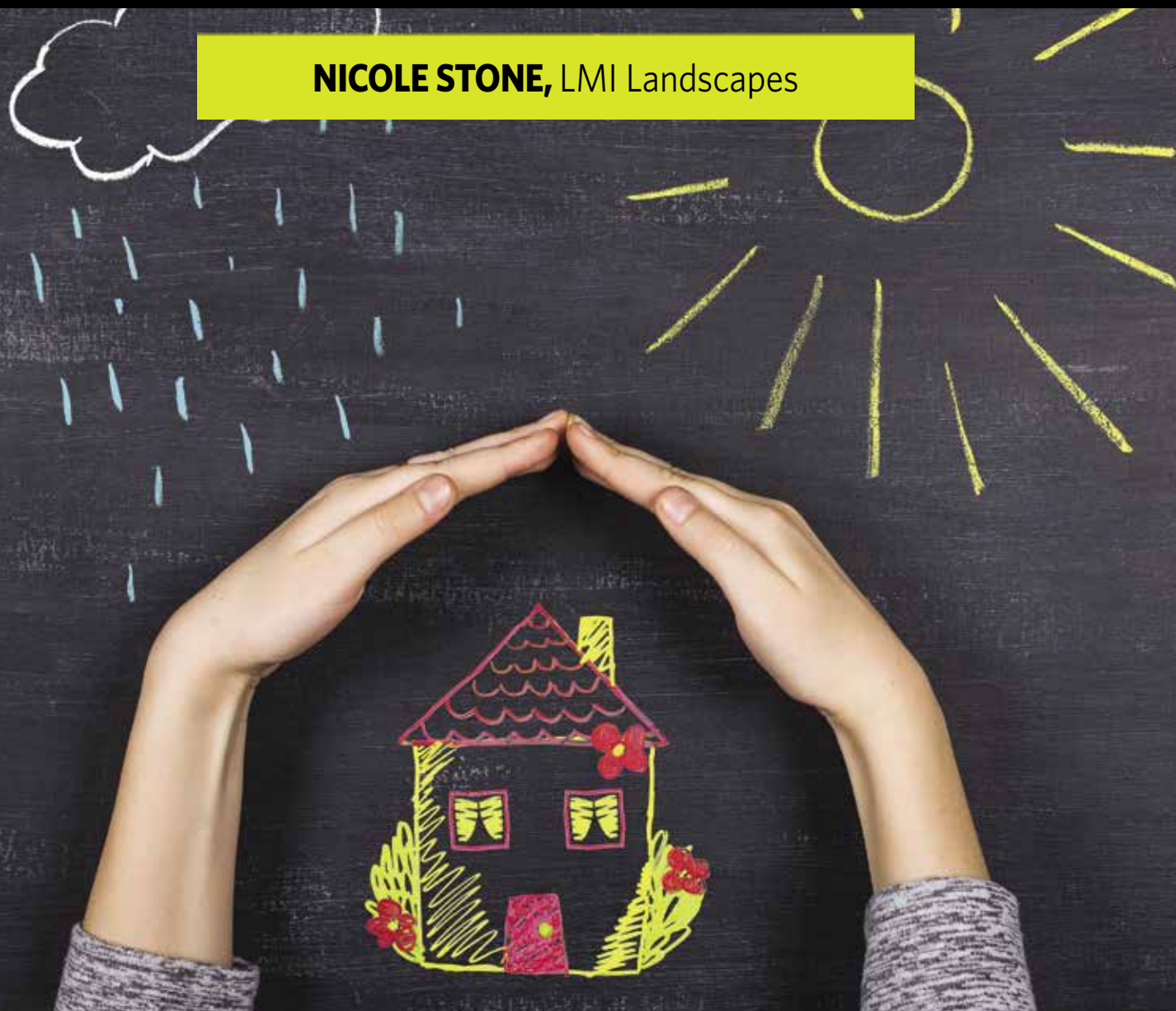
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# How to Keep Communities

# *Looking Good*

(while also protecting them from **natural disasters**)

**NICOLE STONE**, LMI Landscapes



Natural disasters typically announce their arrival by uprooting trees, roaring tornados, or blazing wildfires wiping out entire landscaped communities. Geophysical, hydrological, meteorological, and climatological factors all create severe disruptions to the functioning of communities and exceed their capacity to cope with them using their own resources. Climatological disasters are becoming a much more standard part of everyday life; examples include extreme temperatures, fire, and drought. Drought, unlike most disasters, does not make a grand entrance. Most of the time, many believe it is just a dry spell, while the drought itself continues to build and grow in complete silence. Droughts happen naturally; however, human activity can exacerbate the conditions.

**The big question is how to accomplish this without breaking the bank.**

- **Planning Property Current Enhancements for water conservation and designing around the principals**
- **Creating practical turf areas**
- **Selecting low water plant materials for the Colorado Landscape Seen**
- **Using proper soil amendments**
- **Irrigating Efficiently**
- **Proper Maintenance of the landscape property**

While xeriscape can assist in water usage during droughts, we next look at protecting communities from wildfires during droughts. As building increases, we begin creeping closer and closer to wilderness areas raising the urban wildfire danger. We have seen fires rip through Colorado neighborhoods creating overwhelming devastation and overstressing community resources. Even though wildfires are natural occurrences, climatological conditions such as windy, dry, and hot can ignite vegetation quickly and spread, leaving widespread devastation.

**For communities that live near areas susceptible to wildfires, steps can be taken to protect your property and properties around you.**

- **Create a border or a fuel break around structures.**
- **Thin and groom plant material**
- **Keep grounds well maintenance**
- **Remove all debris**

## **Has your community created an ACTION PLAN to continue beautification efforts while protecting against a potential natural disaster?**

We do not have a crystal ball, and mother nature does not share her forecasts with us, but we need to be mindful of current climate situations. According to the National Weather Service, the drought forecast for the next six months does not look good for Colorado.

Drought is not an uncommon term for Colorado, highlighting the necessity of using water-wise landscape practices. It is hard to believe that almost 75% of summer water is consumed by exterior landscape vegetation. When using water-wise landscape practices, significant reductions can be gained through minor changes in the arrangement of plantings, alternative plant selection, and soil preparation.

Xeriscape is one item that can be achieved to help reduce water use and keep a community looking beautiful. However, this term seems to confuse many individuals. Xeriscape does not mean a specific look or even grouping of plant material. It is a combination of several commonsense principles that save water while creating a tremendous colorful landscape pallet.

Climatological change is ever shifting but can have considerable impacts on communities. The best solution is to address the risks, create a solution, and start implementation to reduce your risk while keeping your community looking beautiful. While natural disasters have unfortunately become far more frequent, planning for the unknown should as well. Through planning and preparation, communities can remain beautiful while keeping the community safe for years to come. ⬆



*Nicole Stone is the Director of Maintenance Operations with LMI Landscapes. A Nebraskan native but Coloradan at heart, Nicole Stone has over 17 years of experience in the Green Industry ranging from construction, estimating, irrigation, and maintenance. Nicole is inspired by the opportunity to create an environment where clients know their value. Nicole's experience and qualifications have allowed her a solid understanding of business visioning, establishment, consolidation, and expansion – she continues developing and refining her innate talent for developing strong client alliances and partnerships.*

# UPDATES

## **CAI encourages all designation holders to review the revised *Designation Ethics Enforcement Procedures and the Professional Manager Code of Ethics and Certified Insurance & Risk Management Specialist (CIRMS®) Code of Ethics.***

- **CAI Professional Manager Code of Ethics and Clarification Document** – affects designees holding an AMS®, PCAM®, LSM® or an AAMC®.
- **CIRMS Code of Ethics and Clarification Document.**
- **Designation Ethics Enforcement Procedures** – impacts designees holding an AMS, PCAM, LSM, RS®, CIRMS or an AAMC.

The CAI Board of Trustees approved revisions to the **Professional Manager Code of Ethics** by:

- Expanding Code 2 to define duties owed to CAI.
- Making clarifications to Code 8.
- Further defining the management and mismanagement of Client funds in Code 10.
- Further defining unprofessional behavior in Code 13.
- Making clarifications changes to Code 14.

And revisions to the **Professional Manager Code Clarification Document** by:

- Creating a Preamble.
- Simplifying the applicability of the Code under the Definitions.
- Further providing amplification and clarification to Codes 2, 4, 14 and 15.

The Board of Trustees also approved revisions to the **CIRMS Code of Ethics** by:

- Clarifying continuing education as required in Code 2.
- Simplifying Code 5.
- Eliminating Codes 7 and 10 from Code of Ethics and renumbering the Codes.
- Adding Code 9 that provides: CIRMS shall “Deliver insurance policies and loss history(ies) in a timely manner.”

And revisions to **CIRMS Code Clarification Document** by:

- Referencing the actions in the eliminated Code 7 falls under Code 1.
- Simplifying the amplification of Code 5.
- Removing the amplification of the eliminated Codes 7 and 10.
- Amplifying the new Code 9.

The Board of Trustees approved revisions to the **CAI Code of Ethics Enforcement Procedures** by:

- Further defining the application of the Code under the Scope and Allegations.
- Clarifying the nominating and appointment process for members of the Designation Ethics Committee (the “Committee”).
- Further providing guidance on the appointment of a Hearing Panel.
- Providing guidance on the filing of a complaint by a member of the Committee or the Committee itself.
- Clarifying the Inquiry processes.
- Clarified the process for recommending Sanctions.
- Removed the non-payment of designation fees from the list of special situations.

The revised changes and documents are effective upon publication. Please maintain your integrity—keep up to date on these important changes. Please visit <https://www.caionline.org/LearningCenter/Credentials> for more information on professional credentials.

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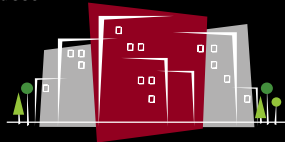
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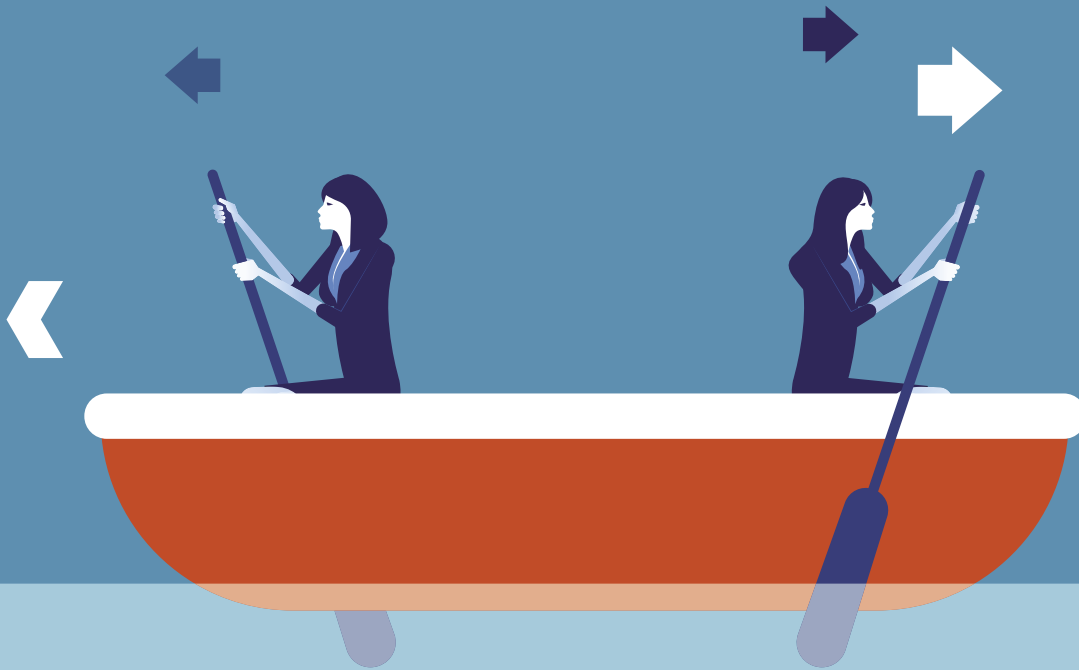
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**HOAMCO Vendor for 16 years**

# 5 Most Common Conflicts of Interest for Board Members

STEVE WALZ, RealManage



**Steve Walz, CMCA**, is the Vice President of Operations - Colorado for RealManage. Steve recently joined the CAI-RMC Editorial Committee. His self-care includes hanging out with his dogs, playing piano, cooking and a glass of wine on his balcony.

## **1. Bringing proposals for consideration from a company either owned by a Board Member or relative/close friend.**

According to the Professional Manager Code of Ethics, 'Managers shall disclose all relationships in writing to the client regarding any actual, potential or perceived conflict of interest between the Manager and other vendors. The Manager shall take all necessary steps to avoid any perception of favoritism or impropriety during the vendor selection process and negotiation of any contracts.

## **2. Voting for a community improvement that would directly benefit them, while not benefitting others.**

This might include making repairs to only their deck or doing siding replacement on only their building, even if another building has more damage and should be addressed sooner. It's the board member's duty to do what's best for the community as a whole.

## **3. Choosing which homeowners should be sent to attorney for collections. Each homeowner should be treated equally as it relates to the rules and regulations.**

If a board member is lenient with a homeowner (perhaps because they're friends) they have to allow the same leniency with all homeowners. Having set policies in place and following them for every homeowner will eliminate the potential for favoritism.

## **4. Selective enforcement of who receives covenant violation notices.**

This is very similar to the aforementioned in #3, above. Once again, the BIG rule of thumb to remember here, is treat everyone the same! If you're going to violate someone for having grass over 3" in height, you better violate everyone who has grass over 3" in height. If you don't, it could potentially be a violation of the Federal Fair Housing Act.

## **5. Changing rules and regulations for personal reasons and not taking into account the needs and wants of the community.**

Each HOA community has (or should have) set standards included in their governing documents as it relates to architectural, appearance, landscaping, maintenance, restrictions, etc. These standards set the tone for the community. When buying a house in an HOA community, you're also buying into an HOA's governing documents. If the governing documents require each home to have one tree in their front yard, and someone on the Board has a dead tree in their front yard, they can't just expunge that regulation simply because they don't want to have to buy a new tree. ⬆

# Does My HOA Really Need

**DIRECTORS**

**OFFICERS**

## Insurance?

**ALYSSA E. CHIRLIN**  
Smith Jadin Johnson, PLLC

Inflation is noticeable everywhere today and HOAs are not immune to the pressures caused by higher relative costs. One common remedy to these pressures is cutting costs and one area where it is always tempting to do so is in insurance premiums. However, skimping on insurance coverage now can generate significant costs down the road. For HOAs specifically, it is imperative to have comprehensive directors and officers (D&O) insurance in place. Unlike an HOA's general liability policy, which protects the HOA, D&O insurance, as its name suggests, protects its board members.

As anyone who has lived in an HOA knows, keeping all members happy all the time is impossible. It is inevitable that some homeowners will be unhappy and some of those unhappy homeowners may file lawsuits. D&O insurance kicks in when those lawsuits name individual board members. Defending a lawsuit is expensive and even when the case is dismissed or settles, the costs can still be substantial. Should a homeowner's lawsuit be successful and judgment be entered against a board member, the costs could be astronomical. Without a D&O policy in place, these costs can fall to the HOA, if it indemnifies its board members, or even to the board members themselves, if the HOA does not indemnify its board members or does not have the funds to fulfill its duty to indemnify them. HOA board members are often volunteers, committing their time, energy and talents to their community, and, in order to attract and retain qualified, valuable board members, HOAs need to offer them protection from expenses that, even when claims are completely unjustified, can be potentially ruinous.



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HOAs need to protect not only their board members, but also themselves. Many HOAs already indemnify their board members in their governing documents and even without specific authority therein, the Colorado Revised Nonprofit Corporation Act permits HOAs to provide such indemnification. By doing so, HOAs assume responsibility for the costs that may arise when a board member is sued for his or her HOA work. This can be an expensive assumption and an HOA can face depleting its reserves or, if it does not have the funds in place, assessing the costs to its members. HOAs should not take on this responsibility without D&O insurance in place.

D&O insurance coverage can vary widely, but typically covers the attorney fees and costs associated with defending board members against legal claims that are related to their work for the HOA as well as any settlement or judgment amount. Some D&O policies may limit coverage to only board members, while others include an HOA's employees, committee members, and management. Some policies cover lawsuits, but not arbitration (which may be required by an HOA's governing documents) or mediation. Some policies may only cover claims for monetary damages, but many lawsuits brought by homeowners against their HOAs do not seek financial compensation at all and instead seek an order from the court that the HOA perform a certain action. Failure to enforce the governing documents or adhere to the bylaws, challenges to assessments or architectural review decisions, improper removal of a board member, and failure to maintain common areas are all examples of non-monetary claims that may be brought by a homeowner and would not be covered under a D&O policy that limits its coverage to monetary claims.

HOAs that are subject to the Colorado Common Interest Ownership Act (CCIOA) are required by law to carry D&O insurance, so it is likely your HOA has a policy in place. Instead of selecting the least expensive policy in order to meet this requirement, however, boards should discuss their HOA's specific needs with their insurance agent and ensure that their D&O policy covers them. Although it may be difficult to fund a comprehensive D&O policy now, it can save the HOA, and its board members, large sums of money later on. ⬆



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# MANAGEMENT COMPANY FOUND LIABLE IN ASSOCIATION WORKERS' COMPENSATION CASE

## *Why Every Community Associations Needs a Workers Comp Policy*

**GARY DECK**  
CAIS, LLC



## PROTECTING THE MANAGER AND THE ASSOCIATION

Even though all Community Associations should only hire licensed insured contractors, we know this does not always happen. By hiring uninsured vendors or contractors the Management Company and the Association can be held liable for workers comp claims submitted by their vendors.

To protect the Management Company and the Community Association against unwanted workers comp claims the association should purchase a 0 payroll (referred to as an "if any") workers comp policy. Many managers and association board members think that since their association does not have employees, they do not need workers comp coverage. California Court of Appeals case, Heiman v. Workers Compensation Appeals Board proves that associations and Management Companies can be held liable for vendors that are injured working for a community association. A workers comp policy provides a "backstop" should a contractor's policy fail. Both the Management Company and the Association are protected with a workers comp policy.

### Management Companies should amend your contract

Because of the potential "shield" this "if any" backstop provides for you as the manager, you might seriously consider rewriting your contract to require your clients to carry this coverage. Most management contracts that I've seen require the association to carry Directors and Officers (D&O) and General Liability (GL) insurance. Because of the far-reaching consequences of this case, Workers' Compensation should be a required coverage in your management contract.

### Coverage for volunteers

In addition to the "if any" exposure addressed in this case, the Association and the Management Company are at risk of owing workers' compensation benefits to injured volunteers who perform "work" on behalf of the Association. Imagine these scenarios: An association member volunteering at a "Saturday Community Clean-up Day" is injured, or a Board Member slips and falls during a site inspection. While the General Liability policy provides "bodily injury" coverage, bodily injury to an "employee" is specifically excluded so the exposure can be pushed to a workers' compensation policy. A volunteer performing work on behalf of the Association could easily be construed as an "employee" by the GL carrier, especially if the injuries are significant. To cover volunteers, board members and committee members the

association must purchase a workers comp policy that extends coverage by endorsement to volunteers. Without volunteer coverage the associations volunteers are NOT covered.

### If they refuse to buy

Sometimes, good Boards make bad decisions. All they see is someone else (this time the insurance guy) sticking it to them for another \$352 to insure for some highly unlikely incident. Sadly, that will be the perception of some of your clients. The best thing you can do is present the details of this case California Court of Appeals case Heiman v. Workers Compensation Appeals Board (available at Davis-Stirling.com website), explain the coverage opportunity for the exposure, and recommend that they buy coverage. If all that fails to inspire them to buy coverage, all you can do is protect yourself if they say "no" is to have the association board sign a "refusal/rejection of coverage" letter. The associations broker/agent should keep a copy for if and when a workers comp claim arises.

## COVERAGE AVAILABILITY

Until recently, this type of complete workers' compensation policy for common interest developments has been tough to come by. While some carriers offer coverage for the "if any" exposure, they do not offer coverage for volunteers. Other policies provide "if any" coverage and only offer coverage for Board Members, recommending that you simply extend the definition of "board" via appointed committee. It is important that the policy obtained offer coverage for both the "if any" exposure and ALL volunteers working at the direction of the Board.

## SUMMARY

All Management Companies and Associations should follow these recommendations:

1. Hire only licensed and insured contractors
2. Purchase an "if any" workers comp policy with volunteer coverage.

Insurance agents who insure Community Associations should offer their clients a workers comp policy that includes coverage for volunteers every year at renewal and keep a signed rejection letter on file in case the Association decides not to purchase this policy. 🏠



**Gary Deck** is the Director of Sales and Distribution at CAIS, LLC. CAIS is a specialty wholesale Broker and national wholesale Managing General Agent and is the National Program Administrator for the PMA Association Workers' Compensation program. For additional information regarding this article, he can be reached at 916-212-8310 or at [gary@mgalive.com](mailto:gary@mgalive.com).

# It's **NOT** your money!

**DAVID FORD-COATES**, Alliance Association Bank

When managing your association's funds, the number one concept to remember is, **it is not your money!** You are a fiduciary who is responsible for the funds of a non-profit corporation, owned by all the individuals in the association. Your first priority should always be safety of principal, with return on investment as a secondary, or even tertiary objective. It is all too common where HOA's flip these priorities.

The temptation for boards to "chase a higher yield" is always there and it can create more inherent risk, especially if it leads to the association making unsuitable investments. Chasing yield has been more prevalent over the past 12+ years, for several reasons. The most important being that as a society we have dealt with a historically low interest rate environment. This has affected savers a great deal (both corporate and individual). Even as we head into a rising interest rate environment, we will likely see bank interest payments on deposits lag behind. This is because there are also historically high levels of cash and banks are carrying these deposits. Therefore, the banks are not currently incented to increase interest payments to drive in deposits. The good news is this is cyclical. Interest rates will eventually rise, and if the principal is safe, your HOA will benefit. On the flip side, it can be tough to replace a market loss when making unsuitable investments. That's why we always need to stay focused on priority number one - safety of principal.

It is a best practice for community association boards to establish and maintain a clearly defined Investment Policy, so the treasurer and community association manager always know what actions to take with the association's funds. This keeps the board from having to meet every time there is a surplus of funds or a CD comes due. The Investment Policy will address the amount of money to be held in the operating account and what happens when the account goes over or under the target balance. It will also address how the reserve funds should be invested. Areas to consider when developing or updating the IPS should include safety of principal, time horizon for investing, liquidity needs, and target return on investment. You may notice that I listed return on investment last.

For example, some associations elect to keep funds invested in FDIC insured CD's with maturities less than one year. This is a conservative approach, but it keeps funds liquid, generates some interest, and FDIC insurance is considered the "Gold Standard" when it comes to principal protection. For large balances over \$250,000, some banks offer excess-FDIC programs like the IntraFi Network (Formerly ICS & CDARS), which offers liquid and certificate of deposit options to keep up to tens of millions of dollars in deposit balances FDIC insured. This eliminates the need to run all over town looking for another bank to place a \$250,000 account and dealing with multiple signature cards.

Another common investment strategy for associations is to ladder certificates of deposit (CDs), which can maximize interest income, while at the same time maintain an ideal level of liquidity. Since we are likely heading into a rising interest rate environment, it's currently common practice to keep the duration to less than 12 months. If you have \$100,000 to invest, you could consider opening a 3-, 6-, 9-, and 12-month CD each for \$25,000. As they mature, roll them into a 12-month CD. In nine months, the association will have four 12-month CD's that mature every 90 days.

Associations that keep high balances in their checking accounts and spend more than \$250,000 per month might consider utilizing a sweep account. In a sweep account the association can set a

target threshold for their checking account that is constantly met by sweeping funds in and out of a separate investment account. These funds are often invested in money market instruments and backed by the full faith of the federal government. Many excess-FDIC programs offer this feature, as well.

**In closing, I recommend being BORING with banking and investments and AGGRESSIVE with reserve contributions and capital planning. That simple philosophy will help you maintain a financially stable community in this ever-changing environment. ⬆**



*David Ford-Coates is Vice President of HOA Banking for Alliance Association Bank in Colorado.*

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# Biden Administration Announces New Housing Policies

C. SCOTT CANADY

The Biden administration announced policies to lower housing costs and increase the supply of homes for sale and rent. CAI has evaluated the announcement and identified three areas of primary interest to community association board members, managers, and business partners: zoning reform; preserving existing housing; and limiting investor purchases of foreclosed homes.

## Zoning Reform

The Biden administration links higher housing prices to a slowdown in home and apartment construction compared to prior decades. An estimated shortfall of 1.5 million new homes has left first-time homebuyers and rental households fewer and more expensive options, according to Moody's Analytics estimates.

Zoning requirements are singled out as a leading cause of the housing shortage. According to the White House announcement, single-family zoning, minimum lot sizes, and minimum parking requirements limit construction of mixed-use apartments, condominiums, and accessory dwelling units (ADUs).

The White House has called for zoning reforms by local governments to increase housing supply through ADU construction. The White House projects zoning reform by state and local governments will lead to 1 million new ADUs nationwide in the next five years.

CAI's newly adopted public policy on ADUs in Community Associations and public policy on Short-Term (Vacation) Rentals in Community Associations are based on the concept that community association homeowners are best positioned to manage their communities. This approach is consistent with our constitutional framework that limits federal government authority over state and local government land-use policy.

Because the federal government lacks direct authority over many state and local government land-use decisions, federal programs are sometimes used to persuade state and local officials to change zoning ordinances. The Biden administration's housing plan takes this approach. Land use and zoning requirements will now be considered by the U.S. Department of Transportation when awarding certain competitive transportation funds to state and local governments.

## Preserving Existing Housing

The White House proposal seeks to preserve existing rental housing through federal loan guarantees to finance rental housing rehabilitation. CAI believes this priority must be extended to aging condominiums and housing cooperatives to preserve ownership housing.

CAI has called on the U.S. Department of Housing and Urban Development to support the Securing Access to Financing for Exterior Repairs (SAFER) in Condos Act. This legislation, introduced by Reps. Charlie Crist (D-Fla.) and Debbie Wasserman Schultz (D-Fla.), will help condominium homeowners afford special assessments related to building structural repairs.

CAI will meet with HUD officials in June to discuss the SAFER in Condos Act and federal loan guarantee proposals to support financing for condominium association and housing cooperative structural repairs. Condominiums and housing cooperatives are an affordable homeownership option for millions of households. Preserving this housing must be a national priority.

## Limiting Investor Purchases of Foreclosed Properties

Corporations are acquiring homes at a higher rate than in previous years, accounting for 25% of all home purchases in the 3rd quarter of 2021. Corporate owners typically convert homes, including homes acquired in community associations, to rental housing. Homebuyers are left competing for fewer homes, which artificially increases home prices and limits homeownership opportunities. The Biden administration's housing plan levels the playing field for households seeking to purchase a foreclosed property as their primary residence.

The administration will require federal housing agencies, such as Fannie Mae and Freddie Mac, to offer foreclosed homes for sale to buyers who will live in the home as their primary residence prior to accepting bids from corporate buyers. The administration also will require federal housing agencies to offer foreclosed properties for sale to nonprofit organizations with a homeownership mission before accepting bids from corporations. Because federal housing agencies own, guarantee, or insure 70% of all outstanding mortgage debt, this policy change will allow homebuyers and housing nonprofits to submit offers on foreclosed properties without competing against cash offers from corporations.

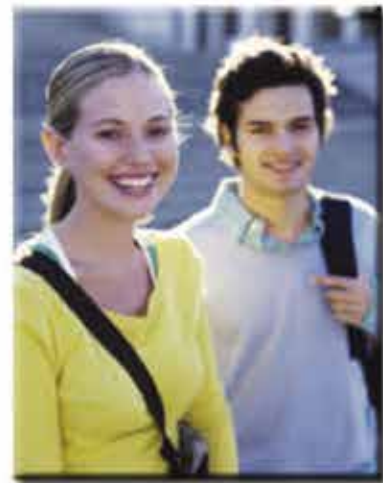
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NAME	ORGANIZATION	DESIGNATION	AWARD DATE
Mrs. Leslie M. Ashford, CMCA, AMS	Hammersmith Management, Inc.	AMS	05/05/2022
Ms. Lisa Bradley, CMCA	DMB Community Life, Inc.	CMCA	05/10/2022
Mr. Paden G. Brown, CMCA, AMS	Advance HOA Management	AMS	03/31/2022
Mr. Christopher Crawford, CMCA		CMCA	04/01/2022
Mrs. Erica Ann Fransen, CMCA, AMS		AMS	03/25/2022
Mr. Richard Hamp, CMCA, AMS		AMS	04/28/2022
Mr. Richard Hamp, CMCA, AMS		CMCA	03/17/2022
Mr. Greg Mock, CMCA	Colorado Association Services-Ft. Collins	CMCA	05/05/2022
Ms. Melanie L. Peck, CMCA, AMS	TMMC Property Management	AMS	03/24/2022
Mr. Jon Rea, CMCA	Heather Gardens Association	CMCA	04/12/2022
Mr. Mattia Sammuri, CMCA, AMS	East West Urban Management, LLC	AMS	04/14/2022
Mr. Kenton Sickels, CMCA, AMS	Colorado Association Services-Lakewood	AMS	03/30/2022
Mrs. Cori Tiffany, CMCA	Cherry Creek HOA Professionals	CMCA	05/03/2022
Mr. Luke Unruh, CMCA, AMS		AMS	03/24/2022
Ms. Mirna Acacia Vargas-Cabrales, CMCA	CCMC - AZ	CMCA	04/05/2022

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*To provide a membership organization that offers learning and networking opportunities and advocates on behalf of its members.*



# Welcome New Members

**Michael Beckstead**

**Susannah Hart**

**Diana Jansen, CMCA**

**Maria Katariina Linna**

**Laura Shelley**-4 Seasons Management Group, LLC

**Kimberly Jackson**-Advance HOA Management

**Daniel J McGrath**-Advocate Construction

**Joseph Mullan**-Allegra Marketing, Print, Mail

**Betsy Dodd**-Cherokee 1 Homeowners Association, Inc

**Michael Fuvnier**-Cherokee 1 Homeowners Association, Inc

**Lisa Hagerman**-Cherokee 1 Homeowners Association, Inc

**Eileen Von Heusen**-Cherokee 1 Homeowners Association, Inc

**Cori Tiffany, CMCA**-Cherry Creek HOA Professionals

**Maya Crow-Willard**-

Colorado Association Services-Lakewood

**Jake Surface**-Colorado Association Services-Lakewood

**Leah White**-Colorado Association Services-Lakewood

**Tanisha Dembicki**-Colorado Siding Repair

**Patrice Diem**-Crystal Lakes Road and Recreation Association

**Sean Davis**-DHA Construction Management

**Mackenzie Kate Hanley**-East West Urban Management, LLC

**Natasha Lehnert**-East West Urban Management, LLC

**Drew Smith**-GAF Roofing Material Manufacturer

**Eric Pireve**-Gold Peak Homeowners Association, Inc.

**Michael Sexton**-Gold Peak Homeowners Association, Inc.

**Alan Vogl**-Hammersmith Management, Inc.

**Carly Spengler**-Haven Community Management

**Rhonda Bender**-Heritage Greens at Legacy Ridge Homeowners Association, Inc.

**Matthew Gassen**-HOA Capital

**Michael Hamill, Jr.**-Kapella Roofing LLC

**Luke McFetridge**-Kellison LLC

**David Oberhoffer**-LiftMaster - Chamberlain Group

**Oren Anderson**-Lindenwood Homeowners Association

**Mariel Barandiaran**-Lindenwood Homeowners Association

**Thomas Fitzpatrick**-Lindenwood Homeowners Association

**Derek Hoffman**-Lindenwood Homeowners Association

**Tom Jubin**-Lindenwood Homeowners Association

**William Stratton Hymes, CMCA**-  
McNeill Property Management

**Jed Van sciver**-Mountain Chalet Property Management, Inc

**Ana Hernandez**-Service Plus Community Management

**Magdalene Mcallister**-Service Plus Community Management

**Hector Ortega**-Service Plus Community Management

**Carol Ott**-The Romero Group

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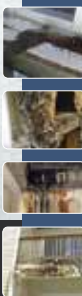
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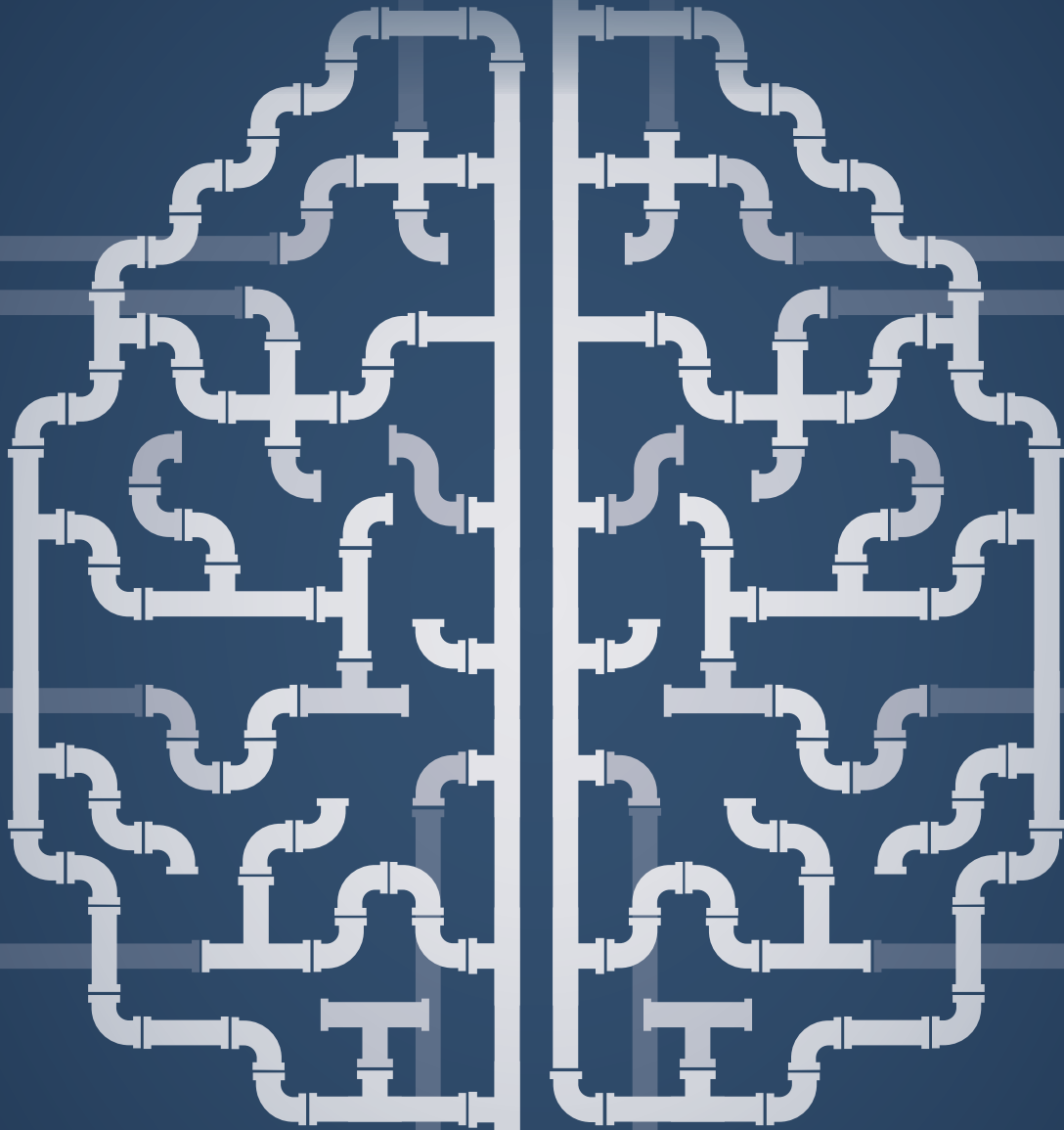


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# CAI-RMC EVENT CALENDAR

## July

<b>28 Thu</b>	Summer Social
<b>29 Fri</b>	Management Company Lunch Forum

## August

<b>2 Tue</b>	Peak 2 - Financials
<b>4 Thu</b>	Northern Colorado Reverse Trade Show
<b>26 Fri</b>	PCAM Lunch Forum
<b>30 Tue</b>	Community Association Virtual Workshop

## September

<b>1 Thu</b>	Peak 2 - Financials (Fort Collins)
<b>9 Fri</b>	Business Partner Forum
<b>26 Mon</b>	Mountain Conference & Annual Meeting

## October

<b>21 Fri</b>	Annual Clay Shoot
<b>25 Tue</b>	Community Association Workshop
<b>28 Fri</b>	Member Outreach
<b>28 Fri</b>	CEO Forum

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