



## McGovern's Vision for CAI- NJ

By: Francis J. McGovern, Jr., Esq.

The Community Associations Institute (CAI) is a national, non-profit organization dedicated to providing the education and resources necessary to foster vibrant, responsive, competent, community associations and helping them promote harmony and responsible leadership.

Community Association Volunteer Leaders (CAVLs), Community Managers, Community Management Companies as well as Business Partner members made up of professionals and service providers, rely on CAI as the definitive source for:

- The most up-to-date information on association management and operations to keep communities on the leading edge
- Best practices in the community association industry
- Innovative educational courses centered on creative learning
- Networking forums for professionals, service providers, managers and community association volunteer leaders

The following is the text of a speech given by Francis J. McGovern, Jr., Esquire at the New Jersey Chapter's December 10, 2014 Chapter Retreat held at Clearbrook Community Association in Monroe Township, NJ. The audience

was composed of New Jersey Chapter volunteer leaders and staff.

Good Morning. I usually speak extemporaneously but today there are a few specific points I'd like to make so I'm reading from a prepared speech.

Preliminarily, I'd like to thank the Board members and, in particular, Marie Mirra and Nina Stanton. Marie and Nina are two women who have inspired me.

I also have to credit a young man named Roger Nicholson for many of the thoughts that are in my speech today. Since the first day that Roger joined the Board, he has regularly reminded us of our mission.

### I. Our Mission.

CAI-New Jersey is dedicated to enhancing the quality of community association living, through education, legislative advocacy and professional development.

### II. Our Money Comes From Us.

Although relatively small rebates come from CAI National, the lion's share of CAI-NJ's funds come from your and my pockets.

This has to be kept in mind when thinking about "what I get for my sponsorship money". What we, as sponsors, should "get" above all else is education, advocacy and professional development which is naturally more focused on managers and community association volunteer leaders.

Networking, business development, beach parties and golf outings are secondary benefits of doing well by doing good. We do well by doing good.

### III. Managers and Management Companies are the Glue That Binds Us Together

Managers and management companies are the glue that binds us together. We must educate managers. When I say "we", I mean CAI-NJ.

By the end of March, 2015, I would like the Board and its committees, with the help of former chapter leaders, to formulate and begin implementing a plan for getting as many CAI-NJ managers to the CMCA level as soon as possible.

I would like such planning to include CAI-NJ reimbursing successful CMCA candidates for all or part of their course and test fees.

For 2015, CAI-NJ's Legislative Action Committee is requesting \$48,000 in funds and the Political Action Committee is requesting \$7,300 in funds. I support these requests. However, CAI-NJ should also be spending at least that much on Manager Education and Certification.

I would like the management companies to support CAI-NJ in this effort by, among other things, allowing managers time off to take the required courses and sit for the required exams without using PTO time. We must educate managers. Without educated managers, we are failing association volunteers, members, vendors, professionals, developers and government.



## Contributing Writers:



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At a time when CAI-NJ faces unprecedented competition for participants and sponsors from the likes of the Co-Operator, IREM, Large Scale Management Companies and In-house education, CAI-NJ must step up to its mission or become irrelevant.

Anyone can give a course, hold a trade show or publish a magazine. It's everyone in this room's job to fulfil CAI-NJ's promise of education and advocacy. The business partners fund it, the management companies provide the personnel and the CAVL's must demand it.

### **IV. You Are The Future of CAI-NJ**

There has been much said recently about using the talents of our past chapter leaders.

The Board has responded by appointing Ron Perl to the ADR task force, voting to invite past leaders to assist various committees and modifying the speakers' bureau rules to allow greater participation. My understanding is that in the near future the board will also be revisiting committee membership limitations.

Not only will these initiatives tap our membership talent, it will increase the quality of CAI-NJ's offerings whether they are seminars, events or publications.

That being said, you are the future. You must support your committee, get the job done and get to this [the Board] table so that you can carry CAI-NJ's mission of education and advocacy into the future.

Thank you.

*Information on CAI-NJ membership may be found at [www.cainj.org](http://www.cainj.org)*

### **Winterize Vacant Units!**

By: Michael R. Polulak, Esq., Shareholder

It's that time of year again... when extreme cold can cause pipes to burst in vacant units. In light of this, it is important that managers gain access into known vacant units to winterize them. This avoids unnecessary insurance claims and premium increases caused by ruptured water lines.

The Condominium Act provides authority for condominium associations to gain access into a unit for the purposes of protecting the common elements and adjoining units. The

statute, N.J.S.A. § 46:8B-15(b), also permits the condominium association to charge any costs incurred in gaining access and winterizing the unit back to the unit owner. However, prior to gaining access into the unit, the Association should provide reasonable notice to the unit owner and advise that the unit owner that they will be liable for any costs incurred in gaining access and winterizing the unit.

Further, N.J.S.A. § 45:22A-44(b) authorizes homeowner and townhome association boards to exercise its powers in a way that protects the health, safety and general welfare of the residents of the community. In addition, each association's governing documents typically provide additional authority permitting the Association to gain access into units in the event of an emergency. Between the authority granted in the association's governing documents and N.J.S.A. § 45:22A-44(b), homeowner and townhome associations generally have sufficient authority to gain access into vacant units upon reasonable notice to the owner to winterize them for the purpose of protecting adjoining units and common elements.

So, if there is any indication that a particular unit is vacant and not winterized, then we advise that management or our office send a notice to the owner advising that the Association will gain access to the unit to determine whether it is vacant and whether it has been winterized. If vacant and not winterized, then the association will winterize the unit and charge the unit owner back any costs incurred.

### **Rules, Rules, Rules**

By: Scott K. Penick, Esq., Corporate Chair

You hated them as a kid. You wish they were no longer necessary as an adult. But in community living, having some rules is a necessity. Many of these rules are established in the process of creating a condominium, homeowners or cooperative association. To change these initial rules, which are most often found in the declaration, master deed, bylaws or proprietary lease, associations must typically obtain a vote of the membership to amend the governing documents.

However, Boards of Trustees are also empowered with certain rule-making authority. Such rules are best adopted via a board resolution, which must be voted on by the board at an open meeting of



the membership – whether any members show up to the meeting, or not. Each association may have unique needs that have to be addressed with unique rules, but almost every association can benefit from implementing certain standard rules and regulations.

#### Rules that May Reduce Increases in Insurance Premiums

Although there is no direct correlation between these rules and an association's insurance premiums, when associations implement policies that reduce the likelihood of lawsuits and insurance claims – two important factors in determining insurance premiums – there is a strong chance that their future premium increases will be lower. Some of these rules are:

1. Adopt a board resolution requiring owners to conduct dryer vent and chimney cleanings and inspections at least every two years. This reduces the risk of lint and soot-related fires – fires that could result in increased insurance premiums.
2. Adopt a board resolution requiring owners to replace water heaters after a specific number of years. Water heaters are generally expected to have useful life of eight to twelve years. Unfortunately, without a rule requiring timely replacement, many people will wait until their water heater malfunctions before replacing it, and water heater malfunctions frequently result in insurance claims for water damage and increased premiums.
3. Adopt a board resolution requiring owners to install burst resistant washing machine hoses. Along with failed water heaters, leaking or burst washing machine hoses are probably the top causes of insurance claims for water damage in associations. Stop this problem before it happens.
4. Pass a Tort Immunity Amendment to the Bylaws. This limits an association's liability for injuries that occur on the association's property, but it does require at least a two-thirds vote of the membership. The two-thirds requirement is a minimum set by statute, but if the bylaws that are being amended have a higher amendment threshold, then the higher voting percentage will apply.

#### Rules that May Increase Revenue

Assessments are the financial lifeblood of associations. Unfortunately, over the past five to six years, delinquencies have increased

substantially. Some people just do not have the money to pay, but others may simply have put their assessments further down their list of priorities. In order to increase collections and revenue from other sources, associations should consider the following rules:

1. Adopt a Parking and Towing Resolution. Not only should this resolution contain parking rules, but it can – and should – contain provisions that permit the towing of delinquent unit owners' vehicles. It is amazing how often a payment plan is proposed after a trip to the vehicle impound. (Of course, it is critical to ensure that all towing is conducted in compliance with the Predatory Towing Prevention Act.)
2. If an association has the authority to fine unit owners, it should set up a system and schedule of fines for violations of the rules. Ideally, the bylaws permit the board to set the amount of fines, and in such cases, it is possible to establish an escalating system of fines, such as \$50 for the first violation, \$75 for the second and \$100 for the third and subsequent violations. However, it is important to remember that, before these fines can be collected, the member charged with the violation(s) must be given an opportunity to participate in alternative dispute resolution (ADR).
3. Associations that do not have the authority to assess fines, charge late fees or accelerate assessments should attempt to adopt an amendment to their governing documents to establish these powers. Since these powers must generally be in the bylaws, master deed, proprietary lease or declaration, an amendment is necessary to add them. Without the "teeth" of a fining authority, it is very difficult to enforce rules. Without the ability to charge late fees, it is very difficult to enforce timely payment of assessments, and without the ability to accelerate assessments, associations' liens and judgments will almost always be less than the amount truly owed within a month.
4. Adopt a leasing amendment to empower the association to immediately collect the rents of delinquent owners who lease their units. Not only can a leasing amendment allow associations to collect tenants' rents, but it can also increase associations' ability to enforce rules against the tenants. If a landlord does not evict his problem tenants, the association can step into his shoes and conduct the eviction – charging the costs back to the landlord.



These lists are just a sampling of the strategies that associations can implement when making rules that can lead to reduced expenses, improved enforcement and increased revenue. We have an expansive fixed fee “menu” of various resolutions we could discuss with the board.

## Easing the Burden of Vacant Units

By: Karen B. Miller, Esq.

In these tough economic times, it seems no association is immune to the burden of vacant units. While failure to pay assessments is the most obvious problem, vacant units can introduce a host of other problems from squatters to burst pipes. While there is no quick fix or magic formula to correct the scourge of vacant units, there are steps that every association can take to ease and even eliminate the financial and maintenance burden vacant units can create.

If the association is willing to rent units, often the best option is to contact the owner of a vacant unit to see if they would consider signing a quitclaim deed or a rental agreement. A quitclaim deed transfers ownership of the unit to the association, subject to any mortgage or other liens on the property. A quitclaim deed offers two enormous benefits. First, the association can rent the unit and begin recouping the arrears that have been accumulating. Second, the association

can monitor and control the unit and ensure that it does not become a health and safety hazard in the community. A rental agreement provides the association with the authority to rent the unit on behalf of the landlord and collect the rents. It offers many of the same benefits as a quitclaim deed, but without the permanency of actually transferring ownership. In either case, the association should ensure that the unit is in rentable condition – or can be made rentable for a reasonable cost – prior to entering into any agreements.

In New Jersey, a mortgagee who takes possession of a unit is responsible for pay ongoing assessments throughout its possession. If a mortgagee has taken possession of a unit, the association can pursue the mortgagee directly for unpaid assessments. It is a fact sensitive inquiry as to when a mortgagee has taken possession. Whenever it appears that a mortgagee has become involved with a unit, it is best to contact the association’s attorney to determine what options the association may have.

Beyond collections, vacant units also can create nuisances and even health and safety hazards. N.J.S.A. 46:10B-51 requires foreclosing mortgagees to maintain vacant and abandoned properties. While the mortgagee does not have to keep a property in pristine condition, it is responsible to ensure that the property does not become a nuisance or violate any state or local code. If a vacant unit is in disrepair, the association can demand that the mortgagee make the necessary repairs and, if it fails to

do so, notify code enforcement who should then force the mortgagee to make necessary repairs and perform necessary maintenance.

Lastly, with the temperature continuing to drop, associations may be forced to take some maintenance and repairs into their own hands. If a vacant property has not been winterized by the mortgagee, every association with attached units should hire a plumber to winterize any vacant units. Pursuant to the Condominium Act, N.J.S.A. 46:8B-15(b), an association has the right to enter a unit during reasonable hours “to perform emergency repairs necessary to prevent damage to common elements or to any other unit or units.” Therefore, the association may step in to winterize properties in order to prevent the extensive damage that can be caused by a burst pipe. The association can also bill back the costs of the repairs to the unit owner. While this may seem like an added cost to the association, the cost of winterization is minimal compared to the costs of repairing the area surrounding a burst pipe, not to mention the inconvenience to the surrounding units. This same logic can be applied to other unit owner responsibilities, like a broken window or door. Keeping vacant units secure is the best way to protect the entire association and to prevent much greater costs down the road.

While vacant units are never welcome, they can be controlled and even become income generating assets if the association is proactive.

**McGovern Legal Services, LLC.** is continuing to advocate manager education and certification. Please support us in encouraging CAI-NJ to financially support Manager Education and Certification.



**McGovern Legal Services, LLC.** will be at the 2015 IREM Tri-State Conference and Expo! It will be held at the Borgata Hotel & Casino in Atlantic City on February 19th and 20th,  
***Please be sure to stop by and visit us at booth #44!***