



THE QUARTERLY ASSESSMENT

INSIDE THIS ISSUE:

Is your Association Adequately Insured? Re-evaluating Coverage Terms and Limits 1

Resources for Board Members 2

Films and Public Performance Licensing 4

Lead Concerns and Upcoming Regulations 5

Test Your Knowledge 6

Firm Updates: Recent Happenings at Chadwick, Washington, Moriarty, Elmore & Bunn, P.C. 6

Visit www.chadwickwashington.com for our remaining 2009 seminar dates and locations.

IS YOUR ASSOCIATION ADEQUATELY INSURED? RE-EVALUATING COVERAGE LIMITS AND TERMS

Imagine this unfortunate scenario: A fire caused by an electrical short swept through your community. Fortunately no one was hurt, but one building was completely destroyed and two others suffered extensive damage. Buildings can be repaired or replaced, but are you certain that your association's insurance provider will cover the associated costs?

Association governing documents often create an obligation to procure and maintain specific types and amounts of insurance. If the governing documents are vague, a board must make a reasoned assessment of the association's risks and insure them appropriately. Failure to do so may be considered negligence and/or a breach of the director's fiduciary obligation, possibly subjecting the association (and individual board members) to liability.

Maintaining adequate insurance is the board's responsibility; it is not the responsibility of the managing agent or the insurance agent. Reliance on agents will not protect the board from claims of negligence if there is not sufficient coverage.

Despite that potential liability, many boards remain unfamiliar with the limits of and terms of their policies until it becomes necessary to file a claim.

A Devastating Discovery

Staring at the smoldering ruins of a gutted clubhouse or the rubble of a building which once contained several condominium units left by a devastating storm is not the time to discover that the association's policy will not provide adequate funds needed to rebuild. This is precisely the crisis your community could face if the cost of replacing damaged buildings exceeds the value the insurer has "assigned" to them. Two factors directly cause this dilemma: the increase in land value of association property and the rise in cost, over time, of raw materials and construction.

Associations may be able to avoid this potentially devastating shortfall by obtaining a "guaranteed replacement cost" policy, which will pay to restore a damaged property to its pre-disaster condition even if the construction costs exceed the property's assigned value. Not all insurance companies will provide this type of coverage. If your insurance company does not provide this coverage (or if your board is unwilling to pay for the increased premium associated with this coverage), the board should ensure that the association's policy limits match the estimated replacement cost of your community's buildings and improvements. In most circumstances, this may be accomplished by having an insurance appraiser review your policy at least annually and update the estimated replacement value based on property values and current construction costs in your area.

By understanding and periodically evaluating the terms and coverage limits of your association's insurance policy,



you may be able to avoid the liability and shock associated with being under-insured at a time when it is needed most.

Is Your Association Adequately Insured: Re-evaluating Coverage Terms and Limits

Continued from Page 1

Closing a Gap

However, accurate and updated replacement cost estimates may not fully provide the protection your association needs. Even a guaranteed replacement cost policy may leave you short of the funds required to rebuild or repair a damaged structure, as many policies often exclude losses resulting from “governmental orders.” Governmental orders include building code requirements that may not have been in place when the building was constructed which will apply to any new construction or renovation undertaken today. So, while your current policy may restore your damaged building to its original condition, the policy may not cover the added cost of installing sprinklers, creating parking spaces, increasing setbacks, or making other changes that a current building code may require. To close this gap, associations should procure ordinance or law coverage, which is available as a fairly low-cost endorsement to a standard policy.

Property values, risk profiles, and insurance requirements all can change over time, so boards should review their insurance policies periodically, to make sure they have and maintain the coverage they need. As part of this periodic review, boards should also assess, or reassess, the financial strength of their insurance carrier. Having all the insurance the association needs to recover fully from a disaster won't help much if the association's insurer doesn't survive. By understanding and periodically evaluating the terms and coverage limits of your association's insurance policy, you may be able to avoid the liability and shock associated with being under-insured at a time when it is needed most.

Please feel free to contact us or your insurance agent directly if you would like assistance in evaluating the coverage terms of your association's insurance policies.



Please contact us if you would like assistance in evaluating the coverage terms and limits of your association's insurance policies.



RESOURCES FOR BOARD MEMBERS

By Molly Peacock

As members of a board of directors, directors have the opportunity to lead their respective communities and improve or at least maintain their property values. Directors typically have many demands on their time related to their service on the board. In order to lead effectively and make good decisions, directors should seek out quality expert advice. Whether landscaping, plumbing, architectural, legal, accounting, or day to day managing, directors will ideally surround themselves with trusted advisors to help the board to make the best decisions for their community.

Reliance on experts for advice is helpful and necessary, yet should be used in conjunction with a director's own judgment as to what is the best course of action for the association. One way to reduce exposure to liability is to understand first-hand the unique obligations of a board member. Knowing the basic principles of best board member practices may insulate a director from personal liability, and will assist a director in understanding the quality of the advice he or she is receiving. Experience is a great teacher; some situations can be resolved only with adequate experience. However, in other instances, prior education may reduce the potential adverse impacts of a problem.

Where does a director obtain continuing education specifically tailored to help common interest community association board members? How does a director keep up with any changes in the law or new cases that might have direct relevance to his/her association? What is a good way to do so at minimal or no-cost and during non-business hours for those board members who have full time jobs?



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Resources for Board Members

Continued from Page 2

The Community Associations Institute (“CAI”) is a helpful resource for directors. CAI is a non-profit national trade association that focuses on serving community associations across the country. CAI events are held throughout the year where vendors may gather, share information, and learn about the concerns of community associations. Our firm is directly involved with two local chapters of CAI; the Washington Metropolitan Chapter (“WMCCAI”) and the Central Virginia Chapter (“CVCCAI”). More information about the WMCCAI and CVCCAI may be found at their websites, www.caidc.org and www.cvccai.org, respectively.

Chadwick, Washington, Moriarty, Elmore, and Bunn, PC is another resource for board members seeking to educate themselves. Periodically, Chadwick Washington holds seminars in the evenings at no charge to its clients for the express purpose of making educational materials and information available to the board members whom it serves. Topics for 2009 include:

- The Importance of Director Conduct
- Electronic Notice and Voting
- Use of Email
- Violation Notices; the Good, the Bad, and the Complaint
- Amending Governing Documents
- Litigation Anticipation Preparation
- Necessary Clauses in a Contract Addendum
- Anatomy of a Water Damage Case
- Making a Website for Your Association
- ABC’s of Collections
- Bankruptcy: a Numbers Game
- The Rise of Mortgage Foreclosures and its Impact on Community Associations
- Legislative Update
- Case Law Update

Lest Board members sprint away from their positions in fright looking at that long list of topics, rest assured that the topics are broken down in two manageable forms: (i) outlines (rather than dissertations) of the topics are presented in a seminar book available to clients at no cost, and (ii) only six topics at a time are discussed in the most humor-filled, engaging fashion possible by Chadwick Washington attorneys during the actual seminars. Each topic is discussed for approximately 15 minutes; food is served during the intermission, and the evening is tailored to be enjoyable as well as educational for board members and property managers.

Juggling one’s job, family obligations, and personal life, along with the demands of board membership can be difficult. Nevertheless, the ability to solve problems proactively through education saves time and reduces directors’ exposure to liability associated with performing their duties as board members.

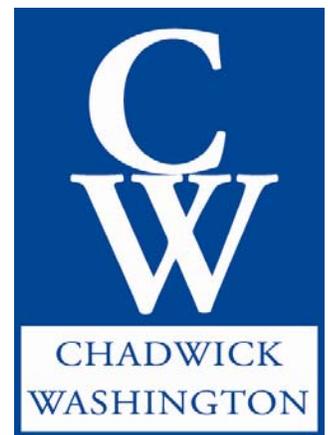
The schedule of remaining seminars is available at the law firm’s website, www.chadwickwashington.com. Remaining seminars will take place in Williamsburg, Virginia, and Washington, DC on September 10 and September 15, respectively. Seminar outline books are available upon request by calling (703) 352-1900, or by emailing mail@chadwickwashington.com.



www.caidc.org



www.cvccai.org



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FILMS AND PUBLIC PERFORMANCE LICENSING

By Bruce Easmunt



Screening movies to association members may be in violation of federal copyright law.



An association must obtain a public performance license to screen each movie to its members.

A few years back, I attended a showing of Washington, D.C.'s "Screen on the Green" film festival (Elvis' Viva Las Vegas was playing... who could resist?). For those of you unfamiliar with this event, large movie screens were installed on the grassy portions of the National Mall and classic movies were displayed free of charge to the public throughout the summer season. On this particular evening, attendees brought their own chairs, blankets, drinks and food, and enjoyed an incredible evening of Elvis.

Now that summer has arrived, associations may ask "What better way to spend a warm summer evening than by inviting our community to our very own private screening of Viva Las Vegas?" Personal preferences aside, many associations may be surprised to learn that such a screening may be in violation of federal copyright law, even if the event is held privately among association members and no admission is charged. In order to avoid the rather severe penalties imposed for a willful violation of the United States Copyright Act (the "Act"), an association should first obtain a public performance license prior to offering the film for member viewing.

Under the Act, a copyright owner has the exclusive right to "perform the copyrighted work publicly." In fact, the Act specifically states that "the rental or purchase of a Video does not bear the right to perform the copyrighted work publicly." Thus, although an association (or one of its members) may own the physical media to be shown at this event, they do not own the right to display the work publicly.

"But wait!" you say, "How can there be a 'public performance' if we limit the screening to Association members only?" The Act defines a public performance as performing or displaying a work "at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered." In addition, even "performances in 'semipublic' places such as clubs, lodges, factories, summer camps and schools are 'public performances' subject to copyright control." Thus, the Association's proposed showing of Viva Las Vegas to its members falls under the Act's definition of a public performance. Therefore, in order to comply with the Act and legally screen movies to association members, an association must obtain a public performance license to screen each individual movie.

Fortunately, this does not mean contacting a large Hollywood movie studio; rather, an association may contact one of several third-party companies to secure a public performance license. Although pricing models may vary, obtaining this license is relatively inexpensive. Fees are determined by several factors, including the amount of times a film is to be shown and the size of the film's audience. As an example, an association with approximately 100-200 members can expect to pay \$100.00 to \$150.00 per day for a single film's public display license.

For those associations desiring to show a large number of films per year, it may be economical to obtain an "umbrella license", in which an association will be able to publicly show as many films as it would like to its members. Typically, an association with approximately 100-200 members could expect to pay roughly \$1700.00 to \$2300.00 per year to obtain this type of license.

Please contact us if you have any questions as to whether your association's proposed screening may require such a license.

LEAD CONCERNS AND UPCOMING REGULATIONS

By Terence Everitt

Next year, federal law will require that contractors performing renovation, repair and painting projects that disturb lead-based paint to be certified and follow specific work practices to prevent lead contamination. Associations with buildings constructed before 1979 should be particularly mindful of this change as there is a greater chance of lead being found in older structures. At one time, lead-based paint was the standard in the United States. It is estimated that eighty-seven percent (87%) of the homes built before 1940 contain lead-based paint. Lead was added to paint for a variety of reasons: for pigment, to speed drying, increase durability, retain a fresh appearance, and resist moisture that causes corrosion. However, although lead enhanced paint performance, it was eventually identified as a particularly dangerous substance. It proved especially damaging to children under age six because their developing bodies absorb lead more readily. Lead may cause damage to the brain, central nervous system, kidneys, and red blood cells. Lead-based paint was subsequently banned for residential use in the United States in 1978 by the U.S. [Consumer Product Safety Commission](#). 16 C.F.R. 1303.

The Problem is Dust

Many continue to believe that the most common cause of lead poisoning is the ingestion of leaded paint chips. In reality, however, the most common pathway of childhood lead exposure is through ingestion of lead dust through normal hand-to-mouth contact during which children swallow lead dust dislodged from deteriorated paint or leaded dust generated during remodeling or painting.

Associations should be cognizant of the dangers presented by dust from lead-based paint when remodeling, renovating or repairing common areas such as hallways, stairwells and recreational facilities. Given the prevalence of lead-based paint prior to 1978, older associations may be at particular risk.

Certification Requirements

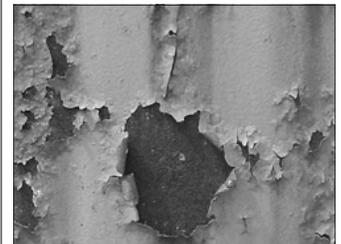
Beginning April 22, 2010, federal law will require that contractors performing renovation, repair and painting projects that disturb lead-based paint in “target housing” to be certified and follow specific work practices to prevent lead contamination. 40 C.F.R. 745.80. “Target housing” is broadly defined as any housing constructed prior to 1978. 40 C.F.R. 745.103. Until contractors are required to be certified, associations should ensure that contractors can explain clearly the details of the job and how the contractor will minimize lead hazards during the work. The U.S. Environmental Protection Agency recommends:

- Asking if the contractor is trained to perform lead-safe work practices and to see a copy of their training certificate.
- Asking the contractor what lead-safe methods they will use to set up and perform the job.
- Asking if the contractor is aware of the lead renovation rules. For example, contractors are required to provide you with a copy of this pamphlet before beginning work.

Please contact us if you have questions or concerns regarding lead regulations.



In 2010 the EPA will require contractors to be certified and follow specific work practices in performance of renovation or repair projects that will disturb lead-based paint.



Associations with buildings constructed before 1979 should be particularly mindful of this change as there is a greater chance of lead being found in older structures.

TEST YOUR KNOWLEDGE: HOW WELL DO YOU KNOW COMMUNITY ASSOCIATION LAW?

How well do you know community association law? Based on the provisions of the Virginia Property Owners Association Act and Virginia Nonstock Corporation Act, are the following statements true or false with regard to a property owners association in Virginia?

1. A board of directors may conduct work sessions or other informal gatherings without notifying association members.
2. A board of directors may take action outside of a board meeting if a majority of members consent to the action in writing.
3. Charges assessed against an association member for a violation of the declaration may not exceed \$50.00 for a single offense or \$10.00 per day for any offense of a continuing nature.
4. If properly requested, an association is required to disclose the actual salary of the six highest compensated employees of the association earning over \$75,000.00.
5. Every five years a board of directors must conduct a study to determine the amount of reserves necessary to repair, replace and restore the association's capital components.

The answers to the above are located to the right in upside down text. To discuss the answers to these questions or any other matters concerning your association, please feel free to contact us at (703) 352-1900.



Answers:
 1. False, see Va. Code Section 55-510.1(A); 2. False, see Va. Code Section 13.1-865(A); 3. True, see Va. Code Section 55-513(B);
 4. True, see Va. Code Section 55-510(B)(2); 5. True, see Va. Code Section 55-514.1(A)(1).

FIRM UPDATES: RECENT HAPPENINGS AT CHADWICK, WASHINGTON, MORIARTY, ELMORE & BUNN, P.C.

- Andrew Elmore instructed the Central Virginia Chapter of CAI's Legislative Update seminar this past June.
- Ken Chadwick and Brendan Bunn will be among the featured speakers of this year's Virginia Leadership Retreat for Managers.
- Ken Chadwick, Andrew Elmore and Jerry Wright are registered lobbyists for the Virginia Legislative Coalition, now CAI's VALAC, a cooperative joint effort of the three Virginia CAI chapters to coordinate CAI's legislative efforts with the Virginia General Assembly throughout the year.
- Jerry Wright was recently elected as the President of the Central Virginia Chapter of CAI, and currently serves as the chairman of the Golf, Education and Legislative Committees of the CVCCAI. Jerry will also be instructing sessions on foreclosures at the Statewide Neighborhood Conference in Chesterfield, Virginia on September 25.
- Jerry Wright was also appointed to serve on the 2009 Virginia Housing Commission's Common Interest Community Work Group and housing & Environmental Standards Work Group, groups which provide recommendations on common interest community, safety and environmental matters to the Virginia General Assembly.
- Bruce Easmunt will have two articles published in the August, 2009 edition of WMCCAI's periodical, *Quorum*.
- We are pleased to welcome Terence Everitt as an associate of Chadwick Washington, Moriarty Elmore & Bunn, PC



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The information contained in this publication should not be acted or relied upon without specific legal advice based on particular fact situations. Should further analysis or explanation of the subject matter be required, please contact Chadwick, Washington, Moriarty, Elmore & Bunn, P.C.

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