Community Association Management *Insider*®

AUGUST 2008

IN THIS ISSUE

IN FUTURE ISSUES

- Controlling 'Electronic Document Discovery' Costs
- Ensuring Compliance to Your Community's Rental Policy

PRODUCED IN CONSULTATION WITH

community ASSOCIATIONS INSTITUTE

FEATURE

Six Guidelines to Prevent Fraud, Embezzlement

Recent news stories of association fund thefts by board members or management companies may be causing concern in your community. In Colorado, the owner of an association's management company recently turned himself in to police for embezzling association money. At one time, he was the association's board president, and while he was in office, he started a management company to handle the association's management duties. Local police say that over a period of six years, the board president embezzled $42,819.46 in dues from the association.

In Virginia, a bankruptcy judge recently ordered the sale of a management company in which the owner is under investigation for embezzlement. About 200 community associations have filed claims worth $10.3 million in this bankruptcy case. According to a complaint filed by Virginia's Real Estate Board and the Department of Professional and Occupational Regulation, the company's former chief financial officer, who was also the owner's son, was the likely primary culprit responsible for embezzling at least $2 million from associations that they managed.

(continued on p. 2)

FAIR HOUSING

Seven Rules for Dealing with Members' Service Animals

Dealing with pets in condominium communities requires balancing the freedoms pet-owning members enjoy on their privately owned property with the rights neighboring members have to enjoy their property.

For example, a Connecticut association recently sued a member to remove her dog from the community. The dog had bitten another member and had displayed aggressive behavior. The court ruled that the dog's aggressive behavior would continue to disturb the peaceful enjoyment of the condominium community by other members, and ordered the dog to be removed [Ryefield II Assn v. Drummond, February 2008].

Some communities avoid this balancing act by banning pets entirely; others impose strict pet size and quantity limitations on members. However, you may not realize that to comply with the Fair Housing Act (FHA), you may have to let a disabled member in your condo community keep a service animal in his unit, even if your community bans pets. And once you let a member keep a service animal, you may face many issues, such as what to do about a service animal that becomes a nuisance to other members.

(continued on p. 4)

Community Association Management Insider (ISSN 1537-1093) is published by Vendome Group, LLC, 149 Fifth Avenue, New York, NY 10010-6823.

Volume 8, Issue 3

Subscriptions/Customer Service: To subscribe or for assistance with your subscription, call 1-800-519-3692 or go to our Web site, *www.vendomegrp.com.* Subscription rate: $337 for 12 issues (plus $17 shipping/handling). **To Contact the Editor:** email *eyoo@vendomegrp.com.* Call: Eric Yoo at (212) 812-8435. Fax: (212) 228-1308.

To Place an Advertisement, Please email Joyce Lembo, *jlembo@vendomegrp.com,* or call (212) 812-8971.

Prevent Fraud, Embezzlement (continued from p. 1)

How to Protect Your Association

The following six guidelines can help associations establish safeguards to protect their assets from thieves:

- Review all invoices and work orders;
- Separate duties when disbursing funds;
- Perform annual audit;
- Review bank statements monthly;
- Ensure adequate, proper insurance coverage; and
- Encourage board to take active role in reviewing finances.

1. Review All Invoices and Work Orders

Gary Rosen, a certified fraud examiner and a practicing certified public accountant in Wilkin & Guttenplan, P.C., recommends that associations get into the habit of reviewing invoices and work orders, especially those that are outside of the normal course of operation.

One way embezzlers cover their tracks is by creating and submitting false invoices for work. To combat this, require that all check requests be accompanied by supporting documentation, such as detailed invoices from vendors. Also, check current invoices against previous invoices. Embezzlers may change the dates on old invoices and submit them. Check whether work was actually performed or goods actually delivered.

When reviewing invoices and work orders, look for similar disbursement amounts, the same vendor with different addresses, or invoice account numbers that aren't in sequence. More important, ask questions. Board members tend to sign off checks and invoices without questioning them. Directors should carefully review checks, invoices, and financial statements, looking for discrepancies.

Be aware of conflicts of interest, as in the situation above, with the board president who established his own management company. Ask vendors to disclose personal or professional relationships with board members or former board members. Be particularly wary of directors who want the association to contract with their own companies.

2. Separate Duties When Disbursing Funds

Your organization may have one trusted person who handles all aspects of cash management. But giving all those responsibilities to one person may be an invitation to embezzlement. No manager or board member should have sole authority for writing checks. Separating duties in the check writing process makes it harder for someone to embezzle association funds.

To prevent your trust from being misplaced, follow these rules for separating cash management duties:

- The person who *prepares* the checks should not also be the one who approves and prepares the invoices and purchase orders;
- The person who *signs* the checks should not also be the one who approves invoices, prepares purchase orders, checks, or payroll, or makes purchases; and
- The person who signs checks should not also be the one who makes bookkeeping entries for accounts payable or the general ledger.

Another step to limit temptation is to require more than one signature on a check. Although many banks may honor checks even if they lack the second signature, or a forger could simply sign both lines, requiring two signatures introduces another hurdle for an embezzler to overcome. Also, missing or forged signatures could possibly raise red flags sooner, increasing the chances of an embezzler's getting caught before too much damage is caused.

3. Perform Annual Audit

All community associations should have a comprehensive annual audit prepared by an independent auditing firm at the end of an association's fiscal year. An auditor may identify falsified records that your system might have missed. An auditor has the expertise in matching and reconciling the association's financial transactions, and may provide ways to improve your community's fraud prevention and detection processes.

If your board suspects fraud, or theft of association money has occurred, you may need to undergo a "forensic"—that is, a crime-solving—audit, whereby a CPA with specific experience in forensic auditing will examine the association's financial records to detect fraudulent activity. This type of auditor or fraud examiner will gather evidence that could be presented in court.

If there is substantial suspicion of theft, the forensic auditor's confirmation will help the association pinpoint the perpetrator. And the auditor can provide expert evidence of how the theft occurred, which could be used in a court action to recover missing funds.

4. Review Bank Statements Monthly

Board members should not rely solely on their auditors and accountants. Directors and managers should look for discrepancies between what the manager shows on the general ledger report and the numbers on the bank's monthly financial statement. If the both the manager and the board receive the statement directly from the financial institution, a potential embezzler may think twice about altering the statements included in the board package.

To check monthly statements, the management company should establish a system to ensure that one association's funds are not comingled with another's. One solution is to have a separate bank account for each association they manage, and keep all funds received for that association in that account.

Rosen's firm experienced a situation in which a management company was collecting maintenance assessments from all of its association clients and depositing them into a single account that the management company controlled. Unfortunately, the management company had been diverting funds from that account for its own use, and the association did not discover the fraud until it had run out of money to pay its own bills.

5. Ensure Adequate, Proper Insurance Coverage

Management companies usually maintain their own policy of fidelity insurance coverage. However, such policies generally only protect management and theft by management. The association manager should also be added to the association's insurance policy.

While insurance does not prevent theft as effectively as internal disbursement processes do, insurance coverage will reimburse an association up to its limit in theft. Anyone who handles association funds should be bonded or insured, and in many states, bonds and insurance are required by law.

When there has been a theft or fraud by someone within the association, the association may be able to obtain insurance coverage for the loss from its own carrier. This type of coverage is often called "fidelity or employee dishonesty coverage," and it covers theft of the association's monetary assets by board members, association employees, and agents, including the association's managing agent.

Fidelity or employee dishonesty insurance protects associations against fraudulent or dishonest acts by the individuals named in the policy. Be sure that the policy covers everybody who handles association money. Make sure it covers not just directors and officers but also the managing agent and any on-site employees.

6. Encourage Board to Take Active Role in Reviewing Finances

Rosen recommends that association boards become actively involved in reviewing the association finances. Boards and management companies that discourage a casual attitude toward reviewing association finances make it difficult for someone to embezzle money.

Allowing the management company to handle everything signals a weak internal controls procedure and offers an invitation for an association volunteer or employee to embezzle funds for years. Seemingly small steps suggested in this article, such as routinely checking invoices and bank statements, performing annual audits, and requiring dual signatures, will dramatically lessen the chances for a compromised individual to think he can get away with stealing association funds.

Insider Source

Gary B. Rosen, CFE, CPA: Shareholder, Wilkin & Guttenplan, P.C., 1200 Tices Ln., E. Brunswick, NJ 08816; (732)846-3000; *www.wgcpas.com.*

Members' Service Animals

(continued from p. 1)

Also, if you allow pets in your community, you need to know which of your pet rules, if any, you can apply to service animals.

Here are seven rules to follow that can help you avoid fair housing trouble when dealing with members who have service animals:

- Set reasonable rules regarding service animals;
- Enforce state, local health, and safety laws;
- Treat all service animals the same;
- Charge members for damage their service animal causes to common areas;
- Ban service animals that create undue financial or administrative burden;
- Ban service animal that hurts someone; and
- Don't require service animals to be identified as such.

Service Animal Basics

A service animal provides assistance to a person with a disability. Dogs are the most common service animals, but other domesticated species, such as cats or birds, can also be service animals, says Nan Cavarretta, president of the Property Management Education Institute. The benefits of seeing-eye dogs or hearing dogs for people with physical disabilities are obvious, as these animals are trained to perform simple tasks such as alerting owners to oncoming traffic or retrieving dropped items.

Also, members with psychiatric disabilities can benefit significantly from "emotional support" or "companion" animals. Courts have interpreted—and guidelines from the Department of Housing and Urban Development (HUD) have spelled out—that animals used for these supports qualify as a type of service animal. Emotional support animals have been proven effective at alleviating symptoms of psychiatric disabilities, such as depression and post-traumatic stress disorder, by providing therapeutic nurture and support.

A service animal can be any breed or size; communities can't place limitations on their size or weight. This is because a service animal is not a pet; rather, it is considered to be more of an assistive aid, like a wheelchair. The law generally requires communities to make an exception to its "no-pet" policy so that a member with a disability can fully use and enjoy his unit.

Member Requests for Service Animals

The FHA protects the right of people with disabilities to keep service animals, even when a community's rules explicitly prohibit pets or impose strict limitations on pets. Sometimes the need for a service animal is obvious, such as a blind person's need for a guide dog.

But if the disability or need for a service animal is not clear, an association may ask a member to provide written verification from a doctor or other medical professional who, in his professional capacity, has knowledge about the member's disability and the need for reasonable accommodation. See our Model Letter: Recognize Reasonable Accommodation Request for Emotional Support Animal, in this issue.

Courts have consistently ruled that a member requesting an emotional support animal as a reasonable accommodation must demonstrate a relationship between his or her ability to function and the companionship of the animal. However, an association may *not* ask for details about the member's disability or require medical records.

Also, an association can't require the service animals to be certified or have specific training. Service animals are often individually trained to assist the disabled member, and the member may train his own service animal. Also, there is no national standard for evaluating the training or performance of any type of service animal, including guide dogs.

Rules for Avoiding Fair Housing Trouble

Rule #1: Set reasonable rules regarding service animals. Although you generally can't apply your community's pet rules to service animals, you can set reasonable rules specific to service animals, says Maryland attorney Stuart L. Sagal. And you should enforce such rules. For example, you can require disabled members to take proper care of their service animals, including walking them in designated areas only, assuming they can have access to those areas.

But if it's not reasonable for a particular disabled member to comply with your community's service animal rules, you must make an exception to accommodate the member. For example, a member who is sight-impaired may not be able to scoop his dog's waste. Cavarretta suggests that in such a situation, you may have to work with the member to seek a solution that eliminates the need for the member to scoop the dog's waste, while addressing your need to maintain the community's sanitary conditions.

Rule #2: Enforce state, local health and safety laws. Fair housing law lets you enforce state and local health and safety laws as they apply to owners of service animals, such as

requiring animals to be inoculated and spayed or neutered. It also lets you enforce local leash laws, scooping laws, and noise codes, if applicable in your locality. It would be unreasonable to require you to break the law to accommodate a service animal.

According to Sagal, some states and localities forbid certain species or breeds of animals to live in residential buildings. Since 1999, ferrets have been illegal in New York City residential buildings and are illegal to keep as pets in California. In Maryland, Pit Bull dogs can be banned from residential buildings.

Rule #3: Treat all service animals the same. Treat all service animals in your community the same, unless doing so is unreasonable. Owners of traditional service animals do not have more rights than do owners of emotional support animals. Fair housing laws make no distinction among service animals.

If, on the other hand, it is unreasonable to treat all service animals the same, you may not have to. Fair housing law entitles only disabled members to reasonable accommodations, says Sagal. But these distinctions are highly fact-specific, so if you think it's unreasonable to treat a particular member's service animal the same way you treat another's, get advice from your community's attorney before deciding how to handle it.

Rule #4: Charge member for damage service animal causes to common areas. You can hold disabled members financially responsible for any damage, beyond reasonable wear and tear, that their service animals cause to common areas. For instance, if a member's emotional support dog chewed up the carpeting in the clubhouse, and you must replace the carpeting, you can charge the member for that damage.

MODEL LETTER

Recognize Member's Request for Emotional Support Animal

If a member's disability is not obvious—for example, a mental disability—an association is entitled to ask for supporting materials that document the member's need for a service animal such as an emotional support animal. The Model Letter below, which you would give to a professional who is familiar with the member's disability, will help you recognize the type of letter that establishes the necessity for a support animal for a member's use and enjoyment of that member's property, when a disability is not obvious. It is important to note that the letter need not provide specifics about the member's disability.

[*Name of professional (e.g., therapist, physician, psychiatrist, rehabilitation counselor) and professional's address*]

[*Insert date*]

Dear Association:

[*Member's Name*] is my patient, and has been under my care since [*insert date*]. I am intimately familiar with his history and with the functional limitations imposed by his disability. He meets the definition of disability under the Fair Housing Act.

Because of mental illness, [*Member's Name*] has certain limitations regarding [*insert condition, e.g., social interaction/coping with stress/anxiety, etc., but no specifics about disability*]. To help alleviate these difficulties, to enhance his ability to live independently, and to fully use and enjoy his unit, I am prescribing an emotional support animal that will assist [*Member's Name*] in coping with his disability.

I am familiar with the therapeutic benefits of assistance animals for people with disabilities such as that experienced by [*Member's Name*]. Upon request, I will share citations to relevant studies, and would be happy to answer other questions you may have concerning my recommendation that [*Member's Name*] have an emotional support animal. Should you have additional questions, please do not hesitate to contact me at [*insert tel. #*].

Sincerely,
[*signed by the professional, e.g., therapist, physician, psychiatrist, rehabilitation counselor*]

However, if your community allows pets under limited circumstances, you must be consistent and also hold nondisabled members financially responsible for any damage their pets cause. Therefore, if a nondisabled member's pet destroys the clubhouse carpeting, you should charge that member for the damage, just as you would charge a disabled member.

Rule #5: Ban service animals that create undue financial or administrative burden. Fair housing law does not require you to make unreasonable accommodations to members' disabilities. If a member's service animal causes your association undue financial or administrative hardship by continually destroying your common areas, you need not allow the animal to stay. Because these are delicate, fact specific situations, it is best to speak with your association's attorney before taking any action.

Rule #6: Ban service animal that hurts someone. You do not have to make accommodations that pose a direct threat to members in the community. For example, if a

(continued on p. 6)

Members' Service Animals

(continued from p. 5)

disabled member's seizure-response dog bites someone, you can tell the member to get rid of the dog. If the member refuses, you can take legal action to have the dog removed.

Rule #7: Don't require service animals to be identified as such. Don't require service animals to wear their licenses, a special identification tag, or the like, as proof of their status as service animals. Fair housing seeks to eradicate discrimination in housing and to ensure that disabled members are treated equally with nondisabled members. Having a service animal's status across it could embarrass the member, says Cavarretta. You can, however, require all animals in the community, including service animals, to wear appropriate identification or inoculation tags, if that is required by state or local law.

- Fair Housing Act: 42 USC §3601 *et seq.*

Insider Sources

Nan Cavarretta, CAPS: President, Property Mgmt. Education Institute, 622 Sailfish Rd., Winter Springs, FL 32708; (407) 489-3390.

Stuart L. Sagal, Esq.: Partner, Sagal, Cassin, Filbert & Quasney, P.A., 600 Washington Ave., Ste. 300, Towson, MD 21204; (410) 823-1881.

Q & A

The INSIDER *welcomes questions and comments from subscribers. You can send your questions to Eric Yoo, Editor, via email at eyoo@vendomegrp.com; via fax to (212) 228-1308; or by mail: Vendome Group, LLC, "Q&A," 149 Fifth Ave., 10th Fl., New York, NY 10010.*

Getting Copyright Licenses for Music and Movie Nights

Q Our association is considering different activities to bring the community together. We are thinking of having a movie night or organizing an event with live music. Do we need to be worried about copyrights. Can an association get in trouble if it shows movies in the clubhouse or hosts a gathering where music is played?

A In a similar situation we addressed last year, a client was not only showing movies but also had hired bands for summer festivals, and the bands covered other people's songs. In addition, the association was playing music from compact discs (CDs). It was our conclusion that these all required licensing agreements and payment of appropriate fees.

Public performance. The U.S. Copyright Act protects anyone who owns the copyright to a song or a motion picture. Among the rights granted by the law, a copyright owner has the exclusive right to perform or authorize someone else to perform the copyrighted work publicly.

The federal courts have held owners of establishments—including community associations—liable for copyright infringing acts of independent contractors, such as performers, disk jockeys, or entertainers, that associations may hire. Associations should not rely on vendors or independent contractors to get the necessary licensing for an event that features live music or film.

Potential fines. Failure to obtain licensing can result in hefty fines for the offending party. The fines can range from $750 for a single incident to $150,000, plus other penalties. The steep penalties, in comparison to the more modest licensing fees, weigh in favor of getting the proper licenses.

Licensing agencies. The following organizations offer umbrella licenses; however, the terms of the umbrella licenses may not adequately protect your association, depending on the structure of your events.

The Motion Picture Licensing Corporation (MPLC) handles copyright licenses for movies. DVDs and home videocassettes are intended for home use only, and the public performance of these videos requires a separate license.

The MPLC offers an umbrella license that allows an organization to publicly perform movies of a wide range of titles for a flat annual fee. The license does not cover showings where admission is charged or where specific titles are publicly advertised. For more information, visit their web site at *www.mplc.org,* call 1-800-462-8855, or send an email to *info@mplc.org.*

For music licensing, contact the following main organizations:

- American Society of Composers, Authors, and Publishers (ASCAP): www.ascap.com; 1-800-505-4052;
- Broadcast Music, Inc. (BMI): *www.bmi.com; licensing @bmi.com;* and
- SESAC, Inc.: *www.sesac.com; customerservice @sesac.com.*

Insider Sources

Suzanne M. Leff: Associate, Winzenburg, Leff, Purvis & Payne, LLP, 1660 Lincoln St., Ste. 1550, Denver, CO 80264; *sleff@wlpplaw.com.*

Mark K. Payne, Esq.: Partner, Winzenburg, Leff, Purvis & Payne, LLP, 1660 Lincoln St., Ste. 1550, Denver, CO 80264; (303) 863-1870.

Responsibilities When Appliances Cause Flooding in Condos

Q A member's washing machine hose burst in the middle of the night, flooding the neighbor's unit and the unit below. Does the condo association have a duty to get involved in a situation like this?

A The best advice is to avoid becoming embroiled in what should be a unit-owner-to-unit-owner dispute. The problem with that advice, though, is that the situation is complicated by owner expectations; the exigencies of the situation, which may include the possibility of damage to the common elements between units; and insurance issues, says attorney Michael Nagle of Nagle & Zaller, PC.

Master policy. Although an association is generally not responsible for damage to units from other units or to the common elements (unless, of course, the damage occurs due to the negligence of the association), owners may well have a claim against the association's master policy of insurance for any damage done to their units—no matter who is at fault.

However, it is not just the master policy that comes into play. Suppose the hose break in this scenario causes damage to drywall, paint, flooring, and furniture in the other two units and some damage to a common element electrical circuit running between the units. Assume that the association had no prior notice of a defect with a common element for which it was responsible. In this situation, there would be no negligence on the part of the board. There may not even be negligence on the part of the owner whose hose burst.

Under these circumstances, the master policy will typically pay for the damages to the units and common elements—but not for damage to personal property within units. Also, the master policy has a deductible amount that will have to be paid by someone.

HO-6 policies. If the owners each have HO-6 policies covering their possessions, the insurers will work out among themselves which will pay what portion of those damages. A HO-6 policy is an individual policy purchased by members to cover items excluded from the association's master policy. In addition to insuring personal property inside the condo unit, an HO-6 policy with a "building coverage" rider may cover special assessments by the association for rebuilding if there are insufficient funds to cover a community's property damage deductible or exclusions in the master policy.

If some damages remain unpaid by the various insurers involved, one or more of the owners may have to pay the remainder. If there was no negligence, there may still be a provision in the governing documents assigning responsibility to the owner of the unit in which the problem originated. If there is no such provision, each owner may have to bear the remaining cost of the damage to his unit.

Remain neutral. Although this issue will most likely be handled as described above, there will be initial panic on the part of the affected owners and demands made upon the association to "do something" about the problem. The board or manager should refrain from calling contractors in and expending common funds. It is easier not to spend them in the first place than to have to recover them later. If the board or management simply must facilitate the necessary immediate repairs, the owners should be put in touch with a contractor that can do the work—but the contractor should be advised up front that it will

(continued on p. 8)

MODEL DECLARATION CLAUSE

Protect Members from Uninsured Negligent Owner

Here's a Model Clause, created with the help of Maryland attorney Michael Nagle, that you can use to amend your governing documents if your community does not have a "no-fault" provision. It requires an owner of a condo unit from which a problem originates to pay for all damages to his unit, other units, and the common elements caused by the incident. Speak to your attorney before using this clause in your governing documents.

NO-FAULT PROVISION

In the event of an insured loss to a Unit or common element under the Association's master casualty insurance policy, if the loss is caused by anything in a Unit or anything deemed to be part of the Unit, the Owner of said Unit shall bear the responsibility for all costs, including the insurance deductible, without regard to the negligence of the Unit Owner or his or her tenant, guest, or invitee. In the event there are contributing sources to the damage, all costs, including the payment of the insurance deductible, shall be apportioned as determined by the Board of Directors, in its sole discretion. The amount of the insurance deductible owed by a Unit Owner shall be charged as an Assessment and may be collected in the same manner as an Assessment. If the loss originates from the common elements, the insurance deductible shall be paid by the Association as a common expense. If the amount of damage does not meet the deductible, no claim shall be filed against the master casualty insurance policy, even if the loss is an insured loss, and the costs shall be apportioned as described hereinabove.

Appliances Cause Flooding (continued from p. 7)

not be paid by the association. The contractor may rightfully require payment from each unit owner, who, in turn, will have to get reimbursed by the appropriate insurer.

No-fault provision. To protect other owners from an uninsured negligent owner, Nagle recommends that the governing documents contain a "no-fault" provision requiring the owner of a unit from which a problem originates to pay for all damages to his unit, other units, and the common elements caused by the incident.

Although the association (or other members who suffer damages) may still have to sue the negligent member, the association will not have to prove negligence, just that the damage was caused by something in the unit. That being said, it is important to note that master policies usually cover unit owner negligence, so a no-fault provision may come into play only for the deductible or for specific types of losses not covered by the policy.

If your governing documents do not include a no-fault provision, consider amending them to include our Model Declaration Clause: Protect Members from Uninsured Negligent Owner.

Insider Source

P. Michael Nagle, Esq.: Partner, Nagle & Zaller, P.C., 7226 Lee DeForest Dr., Ste. 102, Columbia, MD 21044; (410) 740-8100.

RECENT COURT RULINGS

➤ Association's Compliance Process Is Valid

Facts: Two association members were involved in a dispute over the height of trees along their adjoining properties. One member complained that his neighbor's trees blocked his view of a nearby mountain range, in violation of the association's governing documents. The complaining member brought a covenant violation petition against his neighbor according to the association's covenant compliance process. An outside arbitrator determined that six of the neighboring member's trees were too tall.

The neighboring member then sued the association, claiming that the compliance process was not valid and therefore the complaining member could not enforce the tree height limits against him. The trial court ruled for the association, and the neighboring member appealed the decision.

Ruling: A Washington Appeals Court agreed with the trial court and granted a judgment without a trial in the association's favor.

Reasoning: The court ruled that the association met the state's definition of a homeowners association. The association is organized as a nonprofit corporation whose members were homeowners in the community, and it had the authority to impose fees for community expenses.

Also, the association's governing documents authorize the association's complaint process and do not restrict a member's right to challenge the board or arbitrator's final decision in court. The court stated that the association's complaint process allows for an initial evaluation, with notice and a hearing, before an appeal in court.

■ Carlson v. Innis Arden Club, Inc., May 2008

➤ Association President Can't Disburse Settlement Funds

Facts: A condo association sued to stop the developers from making changes to a governing document that would have altered the rights of the existing members. Before the trial began, a court had granted the association a temporary stop order against the developer as long as the association could post a $300,000 bond. Twenty-two association members agreed to pledge personal assets worth $230,000 to secure the bond. Four years later, the court ruled for the association and ordered the bond to be released.

The association's board of directors then approved a resolution to disburse the funds from a potential settlement with the developers. The board president executed a note requiring the association to pay $120,000 to the 22 members for lost income during the four years the bond was in place.

The following year, the board voted to temporarily overturn the decision to reimburse these members. The members sued, and the association asked the court for a judgment without a trial in its favor.

Ruling: A Connecticut court ruled for the association.

Reasoning: The association's board of directors was not authorized to pass a resolution, and therefore the president's note that would pay 22 members $120,000 was an unauthorized act beyond the scope of the president's power. According to the association's governing documents, the association may assign the rights to its future income only with a majority vote of its members in attendance at a meeting.

■ Bosco v. Arrowhead by the Lake Assn., May 2008