

# Community Association Management *Insider*<sup>®</sup>

OCTOBER 2010

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### Illinois Governor Signs New Solar Energy Law

Illinois Governor Patrick Quinn recently signed into law two bills designed to dramatically increase the state's solar energy. House Bill 6202, referred to as the "Solar Ramp-Up Bill," passed the Illinois General Assembly on May 27. House Bill 5429, sponsored by Rep. Sara Feigenholtz (D-Chicago) and Sen. Michael Noland (D-Elgin), initiates the Homeowners' Solar Energy Act to protect the rights of individual homeowners to install solar energy panels on their personal property. Because of this law, no homeowners' association will be able to forbid owners from putting solar panels on their houses or in their yards, within certain guidelines.

The bills are meant to help the state increase its solar energy portfolio to 6 percent by 2015, and will create over 5,000 energy-related jobs, according to Quinn. Under Bill 6202, the energy industry must purchase 0.5 percent of its power from solar sources by June 1, 2012; 1.5 percent by June 1, 2013; 3 percent by June 1, 2014; and 6 percent by June 1, 2015, and each year thereafter.

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## FEATURE

### Avoid Common Space Storage Room Hassles with License Agreement

Many condominium associations provide storage rooms or lockers for their members for a fee. This is one way for an association to generate additional monthly income and provide a nice amenity for members living in smaller units.

If your condo community does not currently provide common space storage, you may want to reconsider. Discussing and researching the viability of common space storage shows members that the association is being proactive in investigating any and all means to generate income without having to unnecessarily raise common charges or impose assessments on its members.

But there are pitfalls to offering members storage space, says Scott Sterling, an attorney for Charles E. Smith Management Inc. One member's stored property may somehow cause damage to another's. A flood may ruin everyone's possessions. Or a member may leave her belongings in her storage locker after she moves out of the community.

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## HIRING & FIRING

### Use Employee Referral Program to Find Good Candidates

Finding good management employees can be tough. Especially, in today's job market, you may find yourself wading through piles of applications from unqualified candidates if you advertise a job opening using traditional recruiting methods.

But there's one recruiting resource that many management companies overlook—their own employees. You can turn your employees into a recruiting team by implementing an employee referral program that pays them for referring job candidates whom you hire, says Patricia Anderson, a Colorado-based human resources consultant.

Thoughtfully implemented employee referral programs are excellent ways to attract the best people at the lowest cost. And an employee referral program's value lies in its economy and ability not only to attract good job candidates but also to show goodwill and commitment to the employee making the referral.

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Director of Production: **Kathryn Homenick**

Director of Operations: **Michael Koplin**

Publisher: **Jennifer Turney**

Editorial Director: **Anita Rosepka**

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## Storage Room (continued from p. 1)

You need to protect yourself against these and other potential problems. But putting storage room rules in a lease agreement isn't the best strategy, says Sterling. Instead, use what's known as a license agreement with members who want to use your storage area. We'll provide you with a Model Agreement: Storage Agreement Protects Property, Reduces Liability. It will help prevent members from abusing your storage areas and protect you from liability if something happens to a member's stored belongings.

### Ability to Charge a License Fee

The fact that a storage area is common space does not prevent the association from assessing a fee for licensing its use to a limited extent, provided there is nothing in your bylaws that specifically prohibits such a fee.

In addition to determining the amount of and establishing the methods of payment and collection of common charges and assessments from its members, the board generally has the right to impose and collect reasonable fees where a portion of the common space accessible by all members is used for a special purpose by certain members. In addition, the board has the discretionary right to operate and manage the property in the manner that it deems appropriate under the business judgment rule and as provided in the bylaws.

Creating and licensing the use of a storage room is one way to generate income. And a monthly fee is not discriminatory or mandatory since no one is forcing a member to use the storage space. Also, it is likely that the space would not otherwise be actually used by members, which defeats an argument that the board is "taking away" a space. The space would still be available for use by all—all members who wish to store items there would have the right to do so, upon payment of a license fee.

### Why License Agreement Works Better Than Lease

It's a good idea to draft an agreement called a license agreement. A license is different from a lease. A lease grants the member certain rights to occupy property. If the member violates his lease, you'll need to go to court to get rid of him. But a license gives the member only the right to use the space for certain limited purposes—in this case, storage, says Sterling. If the member breaks any of the rules that you set in the license agreement, you can terminate the agreement, end his right to use the storage space, and remove his property without going to court or providing the notices required for an eviction.

### What to Say in License Agreement

Just saying that the member can't store any dangerous materials in the storage room and that you're not responsible for any damage isn't good enough, says Leonard Frenkil, a manager with Washington Place Management. "All sorts of things can go wrong with storage room agreements," he says. To help prevent these problems and avoid

liability when they do occur, your license agreement should do these six things:

**1. Ban storage of illegal or dangerous materials.** One danger of storage spaces is that members

may use them to store dangerous materials, such as paints and chemicals, that could create a hazard for your members and property. Members may even store illegal or stolen items there. So make

storage of these items a violation of the agreement. It is important to be specific, says Sterling. “Many people don’t think that paint is dangerous, but it causes a

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## MODEL AGREEMENT

### Storage Agreement Protects Property, Reduces Liability

We drafted this Model Agreement with the help of Virginia attorney Scott Sterling and Maryland manager Leonard

Frenkil. Ask your attorney to help you adapt the agreement for your own use.

#### STORAGE LICENSE AGREEMENT

Between [insert name of association] (Licensor) and [insert name of member] (Licensee), for storage space number [insert #] (Storage Space) at [insert location of storage space] for a monthly license fee of \$[insert amt.], beginning [insert starting date of license]. Licensee resides at [insert address of licensee]. In consideration of the mutual agreements between the parties, Licensor grants a license to Licensee to use the Storage Space specified above at the license fee specified above, in accordance with the following terms and conditions:

- 1. No dangerous or unlawful items.** Licensee certifies that all goods to be stored in the Storage Space are lawfully in Licensee’s possession. Licensee shall not use the Storage Space to store any paint, solvents, or other hazardous, flammable, explosive, or dangerous materials; contraband; illegal substances; or any other item that would contravene any laws, regulations, or provisions of Licensor’s insurance policies; that would cause Licensor’s insurance premiums to increase; or that would cause any nuisance.
- 2. Locks and access.** Licensee is responsible for providing his or her own lock for the Storage Space. If the Storage Space is in a room to which only Licensor has access, Licensor will provide Licensee with access only during Licensor’s regular business hours.
- 3. Liability.** Licensee uses the Storage Space at Licensee’s sole risk. Licensor is not responsible for the loss of or damage to member’s possessions due to any cause whatsoever, unless that cause is the result of Licensor’s negligence. Licensor’s insurance may not cover Licensee’s possessions, and Licensor strongly urges Licensee to obtain his or her own insurance coverage for them.
- 4. Termination.** This license shall terminate upon the happening of any of the following events:
  - a. Upon the failure of Licensee to pay the monthly license fee by the fifth (5th) day of the month;
  - b. Upon the vacation by Licensee of the unit specified above;
  - c. Upon the violation by Licensee of any provision of this License Agreement; or
  - d. Upon the expiration of thirty (30) days after written notice from the first of the month by Licensor or Licensee to the other party that this License Agreement is being terminated.
- 5. Removal and disposal of Licensee’s possessions.** At the termination of this License Agreement upon any of the events specified in Paragraph 4 above, Licensee must remove his or her possessions from the Storage Space at the time of termination without further notice from Licensor. If Licensee fails to remove his or her possessions immediately upon termination, Licensor shall have the right, and is hereby authorized, to remove Licensee’s possessions and dispose of them without liability to Licensor. Licensee shall reimburse Licensor for any costs incurred in removing and disposing of Licensee’s possessions in accordance with this agreement.
- 6. Nature of license.** Licensee understands that this is a License Agreement only and not a lease, and conveys no interest of any kind, possessory or otherwise, in or to the licensed Storage Space, other than the right to use the Storage Space for the storage of possessions under the terms and conditions of this License Agreement. This License is granted to Licensee only and cannot be transferred or assigned.

## Storage Room

(continued from p. 3)

lot of fires,” he says. Add catchall language banning anything that would cause your insurance rates to increase, says Frenkil.

**2. State rules for access.** Some storage areas consist of lockers in a large room that’s open to the community. In those cases, members should be able to have access to their lockers at any time. But other communities lock the door to the storage area as an extra security precaution. In these cases, limit access to regular business hours, when you have someone on duty to unlock the door for the members, says Frenkil.

**3. State that association isn’t liable for losses.** You don’t want to guarantee the security of the members’ belongings. So it’s important to say in the agreement that the member is storing his possessions at his own risk and that you’re not liable for any loss or damage.

But be careful. If the agreement says that the association won’t be liable for any loss or damage to a member’s property under any circumstances, this clause may be unenforceable, says Sterling. That is because in many states you can’t

disclaim liability for your own negligence. “You need to say that you’re not responsible unless the loss or damage is due to your negligence,” he says. Ask your attorney what the rule is in your state. It is also a good idea to remind the member that you don’t have any insurance coverage for his belongings, so he should get his own.

**4. List events that trigger agreement’s termination.** Specify that the agreement will end: if the member fails to pay the monthly fee on time; when the member moves out of his unit; if the member violates any of the terms of the agreement; or after 30 days’ written notice of termination from either the association or the member.

**5. State that member must remove possessions when agreement ends.** Say that as soon as the agreement ends, the member must remove his belongings from the storage area. If he does not, give yourself the right to remove and dispose of them as you see fit, without liability for their loss or damage. You can also require the member to reimburse you for any expenses that you incur in removing his lock and disposing of the storage locker’s contents.

**6. State that agreement gives member no additional rights in storage space.** It’s a good idea to emphasize that the license agreement is different from a lease and gives the member no rights except to store his belongings, says Sterling. You should also say that the license is not transferable, so the member can’t rent out his storage space or let other people use it.

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**EDITOR’S NOTE:** Some areas have laws regulating rented storage spaces. Check with your attorney before offering storage space to members, and make sure that your policies and license agreement comply with any state or local laws.

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### Insider Sources

**Leonard Frenkil, CPM:** The Time Group/Washington Place Management, 7 Gwynns Mill Ct., Ste. F, Owings Mills, MD 21117; [www.thetimegroup.com](http://www.thetimegroup.com).

**Scott Sterling, Esq.:** Vice President and Counsel for Public Affairs, Charles E. Smith Management, 2345 Crystal Dr., Arlington, VA 22202; [www.smithcommercialrealty.com](http://www.smithcommercialrealty.com).

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**Search Our Web Site by Key Words:** best practices; common areas; storage space; license fee

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## RECENT COURT RULINGS

### ► Association Not Liable for Member’s Drowning

**Facts:** A 73-year-old member died while swimming in a circular pattern at the community’s indoor pool, which ranged in depth from three to five feet. At the midpoint of the pool, she began to struggle and went completely underwater and drowned. The incident was documented on the association’s surveillance camera footage.

The member’s estate filed a wrongful death suit against the association. The estate argued that the

association was liable because it had informed members that the entire community, including the pool area, was being monitored by the front desk via cameras and closed-circuit television monitors. The estate argued that the member relied on the presence and monitoring of these cameras when she swam alone in the pool. The estate’s position was that while ordinarily the association may not be liable for such an incident, in this case, the association was liable because it had assumed the duty to protect its residents.

The trial court granted a judgment without a trial in the association's favor, reasoning that the main purpose of the cameras was for security from theft and vandalism and not to ensure swimmers' safety. The estate appealed.

**Ruling:** An Ohio appeals court agreed with the lower court's judgment.

**Reasoning:** The court stated that the association had not assumed the duty of protecting swimmers from drowning by installing surveillance cameras. The court also stated that the estate could not show that the member reasonably relied on the cameras. If the member had any belief that the surveillance cameras were present to protect her from the dangers of swimming in the pool, this belief would have been negated by the several signs posted near the pool that stated that no lifeguards were present and that swimmers swim at their own risk. Also, under Ohio state law, the association was not required to employ lifeguards at its pool because the pool measured smaller than 2,000 square feet.

■ Nader v. Carlyle Condominiums, September 2010

### ➤ Association Not Liable to Investor-Member for Water Damage

**Facts:** In 2006, an association contracted with a roofing company to replace all the condominium building roofs in its community. The roofs had sustained hail damage and were leaking. The company performed the work, addressing the problem not by replacing the existing roofs, but by building metal roofs directly over the existing ones. However, the newly installed roofs began to leak, causing interior water damage.

Amidst the ongoing roofing issues, a current member purchased 15 condominiums. The seller's disclosure described the existing problems with the roofs, indicating that the roofs were ineffective and would have to be completely replaced. After having read the seller's disclosure, the member purchased the units "as is."

The following year, the association amended its governing documents to prohibit a single person, termed an "investor-owner," from owning more than 10 percent of the units in the community. If at the time of the amendment, a single person owned more than 10 percent of the units such as the member with 15 condominiums, that member was prohibited from serving on the association's board and from exercising more than a 10 percent voting right. As a result of

the amendment, the member sued the association for the water damage to his units. The trial court ruled for the association, and the member appealed.

**Ruling:** A Texas appeals court agreed with the lower court's decision.

**Reasoning:** To prevail on a breach of contract claim, the member had to show that there existed a valid contract, the association had breached the contract, and that damage occurred to the member as a result of the association's breach. The court was not convinced that the member sustained any compensable damage caused by the conduct of the association.

The board is made up of five members, who are elected by the majority of members. Even if the investor-member had been able to vote all of his units, he could not show that he would have been able to elect a member of his choosing. And even if someone of his choosing, presumably himself, were elected, he could not show that his one vote would have had any effect on board decisions.

■ Buttross v. Victoria Square Condominium Homeowners' Assoc., August 2010

### ➤ Association Not Liable for Contractor's Full Invoice Amount

**Facts:** A member operates a landscaping company. The association distributed a request for estimates for lawn care services on the community's common areas for the following spring, summer, and fall seasons. In response, the member submitted an estimate of \$5,180. Although the member and the association never executed a formal written contract, the member performed certain lawn care services for the association.

The member submitted various invoices for work performed, some of which the association considered either not authorized or not performed. The association then sent the member a letter itemizing the list of outstanding invoices and detailing its disputes with each. Enclosed with the letter was a check. The memo line listed certain invoice numbers, with the notation "payment in full." The member cashed the check.

The member sued the association for breach of contract. A trial court granted a judgment without a trial in the association's favor. The member appealed.

**Ruling:** An Ohio appeals court agreed with the lower court's ruling.

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## Recent Court Rulings (continued from p. 5)

**Reasoning:** The court found that the check and the letter that accompanied the check were sufficient to have constituted an accord and satisfaction. “Accord and satisfaction” is a contract law concept about the purchase of the release from a debt obligation. The payment is typically less than what is owed and is

not paid by the actual performance of the original contract.

The court ruled that the member had reasonable notice that the check was intended to be in full satisfaction of the debt. The member accepted and cashed the check. Also, the letter detailed the disputed invoices and charges.

■ Herres v. Millwood Homeowners Assoc., July 2010

## Hiring & Firing (continued from p. 1)

We’ll tell you how to set up an employee referral program, give you a Model Memo: Use Memo to Introduce Employee Referral Program, to help you get started, and give you a Model Letter: Send Thank You Letter to Referring Employees, to let employees know that you hired one of their referrals.

### How Employee Referral Programs Help

Traditional recruiting methods, such as advertising in the classified section of the newspaper or on online job boards, are expensive and attract many unqualified applicants. But by turning your staff into a recruiting team, you’ll be able to take the offensive and go out and find good employees, instead of wasting money trying to entice them to come to you.

“Your staff members make great recruiters because they’re plugged into a network of people with similar education and interests,” says Carol Levey, a Colorado apartment management consultant. They can produce a high volume of quality hires who have been statistically proven to have lower rates of attrition. They’ll make an effort to recruit their peers not only because you’ll pay them a commission to do so, but also out of pride, she says.

### Take Four Steps to Implement Program

Implementing an employee referral program is a four-step process:

**Step #1: Plan bonus structure.** There are many different ways to set up your referral program. Levey pays an employee a referral bonus when she hires someone the employee referred and the referral stays for at least 90 days. “On the 91st day, I give the referring employee a \$200 check,” she says. Other associations or management companies prefer to give their employees a more immediate reward. Some may pay a referring employee \$250 on the day the referral starts work, and another \$250 after six months.

Anderson has taken some of her programs a step further by entering the names of hired referrals into a drawing at the end of the calendar quarter. Whoever referred the person whose name is drawn wins another bonus. The amount of money that you give, when you give it, and any other rewards you choose to offer will depend on your market and what works best for your company. There’s little need to worry that an employee will conspire with a friend to take the job and quit right after the bonus is paid. “I’ve had people quit right after I’ve paid the bonus, but it’s rare,”

adds Levey. And, when it does happen, it’s usually not because of collusion. “Employees take too much pride in the people they refer,” she says.

**Step #2: Announce program to staff.** To tell your employees about the program, send them a memo or a brochure describing the program and the bonus structure you’ve chosen. Your memo or brochure, like our Model Memo, should introduce the program to the staff by telling them that they can earn extra money by referring their peers and people they meet. And the memo should set eligibility rules, such as requiring the referring employee to remain employed for the entire waiting period.

This means that both the referral and the referring employee must complete 90 days of active employment for the employee to get the bonus. It’s important to include the word “active,” says Anderson.

You don’t want to pay a bonus to an employee who’s out of the office on leave. But you don’t want to deny the employee her bonus when she comes back, either. By requiring 90 days of active employment, you’ll be able to stop counting days when the employee leaves, then start again when she returns.

The memo should also state when and how the bonus will be paid. Some associations or management companies pay the bonus by writing the employee a check on the day she becomes eligible for it. Others give the employee cash or include the bonus in the next paycheck after eligibility. Choose the method that best suits your situation.

**Step #3: Ask for referring employee's name on job application.** To ensure that you're paying bonuses only to employees who actually make referrals, add a line to your job application for applicants to write the names of the employees who referred them. If you hire a person whose application doesn't indicate that she was referred, don't let anyone later claim to have referred the person.

**Step #4: Send thank-you letters to referring employees.** When you hire a referral, send the referring employee a letter thanking her. Your letter should also tell the employee how much she'll get, and when. The letter serves two purposes. It is motivating, because people like to be recognized, and it reminds employees that they have to wait for some or all of their bonus.

#### Insider Sources

**Patricia Anderson, SPHR:** President, HR To-Go, Inc., 12354 N. Summit Ridge Rd., Parker, CO 80134; [www.hrto-go.com](http://www.hrto-go.com).

**Carol Levey, NALP, CAPS, CAM:** Chief Executive Officer, Levey Enterprises, 6398 Del Cerro Blvd., Ste. 10, San Diego, CA 92120; [www.itpartneronline.com](http://www.itpartneronline.com).

[www.communityassociationinsider.com](http://www.communityassociationinsider.com)

**Search Our Web Site by Key Words:** employee referrals; qualified applicants; employee bonus

## MODEL MEMO

### Use Memo to Introduce Employee Referral Program

Here's a memo we drafted with the help of human resources consultant Patricia Anderson. The memo introduces the employee referral program to your staff and explains the rules. This is just an example. You will need to draft your own rules for your program.

#### EMPLOYEE REFERRAL PROGRAM

To: **All Employees of ABC Management**  
 FROM: **Joe Smith, Human Resources Director**

We are pleased to announce ABC's new Employee Referral Program. You'll be able to earn extra money by referring job candidates we hire. Beginning today, Oct. 1, 2010, we will pay a referral bonus of \$200 to any employee who refers a job candidate whom we hire, subject to the following eligibility requirements:

1. The new employee must have named you as the person referring him or her when the new employee first filled out a job application.
2. The new employee must complete 90 calendar days of employment after his or her start date.
3. You must also remain actively employed for a full 90 calendar days after the new employee's start date. You will not be paid a bonus until you complete 90 days of active employment after the new employee's first day of work.

You'll get your \$200 bonus in the first paycheck you receive after the end of the 90-day period.

## MODEL LETTER

### Send Thank-You Letter to Referring Employees

Send the following letter to an employee who refers a candidate whom you hire. The letter thanks the employee for referring the candidate and tells the employee how much she will receive and when to expect her bonus.

Dear *[insert name of employee]*:

We are pleased to inform you that the person you referred, *[insert name of referred hire]*, has accepted a position with ABC Management. To show our appreciation, we will pay you a referral bonus of \$200 once the eligibility requirements below have been met.

**Eligibility requirements:** The referral must have named you as the person referring him or her when first filling out our job application. Both you and the referral must remain actively employed for 90 calendar days after the referral's start date. The bonus will be included in the first paycheck you get after the end of the 90-day period.

Thank you again for your referral. Please continue to recommend other qualified candidates for open positions at ABC Management.

Yours truly,  
 Joe Manager

Referral start date: \_\_\_\_\_

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