

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

APRIL 2012

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## New Board to Face California HOA Challenges

Seventeen top community association professionals from around the state have been elected to the 2012 board of directors for the California Association of Community Managers (CACM). Charged with establishing and overseeing the statewide association's programs and policies, the board upholds CACM's code of ethics and standards of practice. The group also serves as an advisory body for CACM's educational and certification program for community managers.

Karen Conlon, CACM president and CEO, said that California homeowners are well represented by the depth of experience on CACM's new board. While California's economy may be improving, the recession had a devastating financial impact on associations, creating challenges still ahead, she added.

The board represents nearly 50,000 homeowners associations statewide.

## FEATURE

## Set Rules for Sign Posting in Your Community

With the presidential and other elections approaching, members may want to show their support for a candidate by posting signs on their lawns and porches, or putting posters or decals in their windows. But you don't want to end up with front yard "sign farms" that look unsightly. You also don't want a sign war between neighbors who have opposing viewpoints on political issues and post certain signs just to irritate their neighbors. All of that diminishes property values and looks tacky.

To avoid unattractive or troublesome signage, some associations have a complete ban on all signs. But others feel that the election process and free speech issues are important to members, who should be allowed to post signs—as long as they comply with the community's sign-posting policy. Political signs aren't the only ones that can cause trouble, however. It's common for members who are selling their homes to want to post "for sale" and "open house" signs. And another form of sign posting, using the community's bulletin board, can also be problematic—unless you set rules for sign posting in your community.

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## RISK MANAGEMENT

## Prepare Members, Staff for Natural Disasters

Natural disasters are frightening for any homeowner, but they're an even greater threat to clustered, attached, and stacked homes in a community association. When one home is damaged, others connected to it are more likely to experience damage either resulting from that home's damage or because of greater exposure to weather conditions.

The destructive tornadoes that recently swept across the Midwest have highlighted the need for community associations to make emergency plans to protect their members, staff, and property in the face of a natural disaster. Tornadoes are in the news now, but other parts of the country will see hurricane season soon, and still others experience wildfires at certain times of the year. What can community asso-

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## Sign Posting (continued from p. 1)

### Keep Appearance Under Control

Whether signs are displayed in the windows of high-rise condos or townhouses, or on the lawns of homes, it's reasonable to put restrictions on them. For an example of rules that you can adapt when drafting your sign-posting policy, see our Model Policy: Allow Limited Sign Posting. "Appearance is a legitimate concern of the association," says Florida attorney and *Insider* board member Ellen Hirsch de Haan. Requiring that signs be professionally made can ensure that they're not unsightly. "It's reasonable for appearance's sake to require that signs be professionally made and that members don't use marker and poster board to make homemade signs," Hirsch de Haan points out.

Limiting the size and number of signs can also minimize their impact, she notes. Hirsch de Haan also suggests setting a rule about when political signs can be put up and when they have to be removed—for example, within 24 hours after the election is over.

However, one type of permanent sign is typically allowed. Many homeowners have alarm systems that come with either window decals or small signs that can be posted by the front door or next to bushes on their properties. Some homeowners feel more comfortable displaying the fact that they have an alarm system in place. Hirsch de Haan encourages associations to allow—but limit—the size of security system signs. "In an HOA, members can put these signs in the bushes inconspicuously, and in a one-story condo a decal could be placed in the window," she suggests [Policy, par. 1].

### Protect Property Values

Some associations allow "for sale" signs and "for rent" signs to be posted by members, but this can be problematic. If multiple homes throughout your community have posted for sale signs, prospective members could see this as a sign that the community isn't doing well. "If your community has foreclosures, it can negatively impact market value if people driving though see for sale signs on every yard," says Hirsch de Haan. That's why it's important that your rules limit the size, location, and number of these types of signs, and set out when the signs can be posted [Policy, par. 2].

### Control Bulletin Boards

While most associations set up a bulletin board in a common area and designate it for official notices and other community information, some make room for member-posted materials, or, if community members are very active, provide a separate bulletin board for information on community events. If your association allows members to post materials, they should be limited to certain types of materials—for example, information on committees or clubs, or business cards. Prohibit political signs or large flyers and posters. These rules should be similar to your sign-posting restrictions—that is, limit the nature, number, and size of the postings.

But there are additional concerns for bulletin board postings. That's because bulletin board postings may be different in nature than yard signs and window decals. For example, members may want to post items that other members could find objectionable. And

members could remove other people's postings without permission.

You can set community bulletin board posting rules in your signage policy that ban postings that may violate fair housing law, are related to illegal or illegitimate

activity, and contain profane material [Policy, par. 3]. Like our Model Policy, yours should also limit the length of time postings can stay up and who's allowed to put up and remove postings.

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## MODEL POLICY

### Allow Limited Sign Posting

Here's a Model Policy that restricts sign posting to two types of signs and sets out rules for posting material on the community's bulletin board. Show this policy to your attorney before adapting it for use in your community.

#### PERMITTED SIGNS

**1. SECURITY SIGNS.** No owner or resident is permitted to display any signs of any kind or nature in any window or door of any unit, or in any location which is visible from outside the unit, with the exception of security company signs or decals placed on or within a unit.

**2. FOR SALE, RENT SIGNS.** No sign or other advertising device of any nature whatsoever shall be displayed in such a manner as to be visible from the exterior of any unit, except that "For Sale" and "Open House" signs may be displayed, subject to specifications and in accordance with rules adopted by the Board of Directors, from time to time. [Optional, include specifications, e.g.: No sign of any kind (including "Open House" signs, except on Saturdays, Sundays, and on all legal holidays), nor any advertisement of any kind shall be displayed to the public view on any Lot or Unit, or affixed to any post or pole on any Common Properties, or any Lot or Unit, except that one sign advertising the Unit for sale or rent and having dimensions not greater than twelve inches (12") x eighteen inches (18") may be affixed to the fascia board, wood trellis, or inside window of a Unit. An Open House for the sale or rental of a Unit may be held only on Saturdays, Sundays, or legal holidays.]

No advertising of any kind, including "For Rent" and "For Sale" signs shall be placed on the building or the grounds of the Association, except that a Unit Owner may, subject to Board rules, post on the bulletin board a "For Sale" or "For Rent" sign on a card *not to exceed* three inches (3") x four inches (4"). No owner or resident is permitted to display any signs, including "For Sale," "For Rent," "Realtor," "Open House," or any related sign, on the common elements in the community, or in his/her vehicle parked on the community property.

**3. BULLETIN BOARD POSTINGS.** Members who wish to post material on the bulletin board may not post:

- Material that can be perceived as violating fair housing law, including material that can be perceived as discriminating against people based on their religion, nationality, color, disability, race, sex, or family status;
- Material related to any illegal or illegitimate activities, including postings for solicitations of illegal activities, postings for sales of illegal weapons or other contraband, or any other postings that the Board of Directors determines, in its sole discretion, are for illegal or illegitimate purposes; or
- Material containing profane language or pornographic images. The Board of Directors reserves the right to determine, in its sole discretion, what is profane or pornographic for purposes of the community bulletin board.

All postings must be submitted to the association manager for review and approval by the Board of Directors before being put up on the bulletin board. Only postings bearing the association's stamp of approval will be allowed on the bulletin board. Items on the bulletin board will be checked periodically. Unstamped or unapproved items will be removed from the bulletin board. All postings approved by the Board of Directors will be stamped with the date the posting was approved. All postings that have been hanging for longer than [insert #, e.g., thirty (30)] days are subject to removal by the association. Only the association manager may put up or remove postings from the community bulletin board. Members who remove or put up postings on the board will be denied the privilege of using the board in the future. All postings on the community bulletin board must be [insert size, e.g., 3x5] inches or smaller.

## Sign Posting (continued from p. 3)

**PRACTICAL POINTER:** There's no need to draft separate sign-posting and bulletin-board posting rules. As long as they're properly adopted according to the association documents and sent out to members, you can put all of the sign-posting and bulletin-board restrictions in the same policy.

### Carefully Consider Total Ban

Keep in mind though, that communities that enact a total ban on all signs could experience push-back from members, or worse—bad publicity. That's the case in a current Louisiana lawsuit between

an association—which is being called “Un-American” by some critics—and two homeowners, where the battle over a patriotic lawn banner is particularly heated because of the nature of the sign.

The association is seeking a permanent injunction to prevent the homeowners, a married couple with a son in the Marines, from displaying a banner supporting their son's service, because it violates the association's covenants banning signs. The homeowners are arguing that the association is attacking their First Amendment rights to freedom of expression by enforcing the covenant [The Gardens of Southgate Association, Inc. v. Burr].

Other associations have dealt with damaging publicity over similar situations. Rather than banning signs altogether, communities may choose to avoid controversy by limiting the size and number of signs to keep things under control, says Hirsch de Haan.

#### Insider Source

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

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best practices; sign posting; appearance; property values

## Q & A

The INSIDER welcomes questions and comments from subscribers. You can submit your questions through the “Ask the Insider” feature of our Web site, [www.communityassociationinsider.com](http://www.communityassociationinsider.com).

### ► Finding Out About Employees' Preexisting Injuries

**Q** Is there any benefit to knowing about new on-site employees' preexisting injuries? How can I get this information?

**A** Yes, knowing about preexisting injuries could help the association financially if the employee has an accident at some point later on. After you make a conditional offer of employment to someone for an on-site position—for example, on your maintenance staff—but before he starts work, find out about any preexisting injuries he might have. The existence of an earlier injury won't exempt you from paying workers' compensation benefits through your insurance company, but it will help establish a baseline for the insurance company to measure your obligations to the employee. For example, if you hire someone with only a 50 percent range of motion in his shoulder and he reinjures that shoulder, you're required to cover his medical expenses only until he returns to a 50 percent range of motion in the shoulder.

You can find out about preexisting injuries by requiring all conditional on-site employees to get a

physical exam before they begin work. Instruct the physician to determine whether the individual is able to do the work and to note any preexisting injuries. As long as an injury won't interfere with the individual's ability to do the job, it's okay to hire him. But keep a record of the physician's report.

### ► Preventing Fair Housing Violations When Setting and Enforcing Community Rules

**Q** What common fair housing problems arise from community rules?

**A** In general, community rules trigger fair housing problems in one of two ways—either the rules are enforced unfairly or the rules themselves are unfair.

The first relates to consistency. Communities face potential liability if members of a protected class are singled out for strict enforcement of the rules, while enforcement against others is lax. For example, it would be unlawful to come down hard on African-

American residents for breaking the rules while ignoring similar infractions by white residents.

The second relates to the fairness of the rules themselves. For example, communities have legitimate reasons to govern resident behavior in common areas, such as hallways, parking lots, and outside spaces, but rules that unreasonably target children or limit their behavior in common areas could lead to a complaint of discrimination based on familial status.

The federal Fair Housing Act bans discrimination in housing because of race, color, religion, sex, national origin, familial status, or disability. And many state

and local governments have expanded their fair housing or civil rights laws to include marital status, sexual orientation, gender identity, source of income, age, ancestry, military status, and other characteristics. Check with your local fair housing council or attorney to find out what your local laws cover.

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**EDITOR'S NOTE:** In honor of Fair Housing Month, the April issue of our sister publication, *Fair Housing Coach*, tackles 17 of the most frequently asked questions (FAQs) about fair housing law. For more information, visit [www.FairHousingCoach.com](http://www.FairHousingCoach.com).

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## **Risk Management** (continued from p. 1)

ciation managers do to prepare residents and staff to deal with natural disasters at every stage?

### **Compile Emergency Procedures Manual**

Don't get left scrambling to make the correct quick decisions in case of a disaster. By using an emergency procedures manual, where information can be found easily in one location, you and your staff can respond correctly under pressure, possibly limiting property damage and personal injuries. When developing emergency management procedures, remember to keep the plan simple, which will make it easier for everyone to stay calm during an emergency. But remember to tailor your procedures to your geographic location and member demographic—for example, a senior community has added safety concerns that other communities don't.

Here's what to cover in an effective manual:

#### **Emergency telephone numbers.**

List all relevant emergency telephone numbers so they will be readily available when an emer-

gency occurs. In addition to 911, include the numbers of your local hospitals, utility companies, key personnel from your management office (cell phone and office numbers), and any other important phone numbers that you think may be needed. Also include phone numbers that may be needed *after* an emergency, such as the phone numbers of emergency repair contractors and security guard services.

**Utility outages and equipment failures.** Include procedures for dealing with elevators during an emergency. If your community has an emergency backup generator, this section should say where it's located and how it works.

**Equipment.** Have at least one portable radio for listening to disaster and storm updates, a supply of lanterns or flashlights with extra batteries, well-stocked first aid kits, a defibrillator, and a cell phone with extra batteries. The location of these items should be included in the manual.

**Utility shutoff locations.** It's crucial to know how to shut off water, gas, and electricity to your

community. This can help prevent serious damage during a disaster. For example, do you know how to cut the electrical power to a building if a tree falls on the wires leading in from the street during a storm? For this reason, the emergency procedure manual should include a map and a chart of utility shutoff locations.

Your map should show two things: (1) the locations of all the utility shutoffs; and (2) the tools you'll need to operate them. You should show the tool locations because many shutoff valves need special wrenches that aren't found in an ordinary toolbox. You can make the map yourself, using a drawing or architect's diagram of the community layout and marking the location of each utility shutoff and shutoff tool. Color coding the map is helpful. For example, use blue for water.

Your chart should describe where to find the shutoffs that are indicated on the map. You'll need a chart because shutoffs are often located in out-of-the-way places, such as behind boilers and in stair-

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## Risk Management

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wells. A map alone may not have enough information for someone to find the shutoff valve or switch.

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**PRACTICAL POINTER:** In addition to being a part of the emergency procedures manual, laminated copies of the map and chart should also be stored in your office and a copy should be given to the local fire department.

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### Hold Two Informational Meetings

Natural disasters create chaos and stress that prevent unprepared people from functioning effectively. So, after creating your emergency procedures manual, the next step in preparing your community for natural disasters and their effects is to hold two separate meetings to inform staff and members about your emergency procedures.

**What to tell staff.** First, hold a staff meeting where you can speak frankly with employees about what could happen during an emergency and about their particular responsibilities and the actions that they're required to take as employees of the association. Hand out copies of the emergency procedures manual. Your entire staff should be familiar with how your emergency procedures manual is organized and which procedures it contains, so require everyone on your staff and any security staff to read the entire manual.

Also, tell your staff that the information in your emergency procedures manual is confidential. This way, they'll keep private any sensitive information that

you include, such as security system codes and insurance information. Consider doing a community walk-through with staff to practice procedures.

**What to tell members.** Next, hold a meeting to inform members about the following:

➤ **Emergency kits.** Tell members which items to have on hand in their own disaster preparedness kit. This varies according to communities' geographic location, but typical items in an emergency kit include bottled water, flashlights, batteries, and nonperishable food.

➤ **Resources.** How will members get information about disasters, especially whether one is headed their way? Provide resources, both local and national. The Federal Emergency Management Agency provides a site, [www.Ready.gov](http://www.Ready.gov), with disaster preparedness tips, and the National Weather Service site, <http://weather.gov>, has up-to-the-minute severe weather information and warnings.

➤ **Association's plan.** Reassure members that you have an emergency procedures manual that you and your staff will use in case of a disaster, explain the basics of the plan, and let them know that your staff has been trained to execute the plan. Distribute the manual at this meeting, but keep extra copies in your management office. Also, consider posting a PDF of the manual on your community's Web site, if you have one.

Many members will expect that municipal services and civil agencies will respond to the community's needs during and after a disaster. But this isn't always the case, and you should be quick to point out that the community

shouldn't rely on that aid. Stress the importance of reading and understanding the emergency procedures manual as well as utilizing the outside resources you've provided. Emphasize the need for members to familiarize themselves with emergency preparedness tactics.

After the meeting, communicate about preparedness through newsletters, bill inserts, and your community Web site, if you have one. This will keep members, especially those who didn't attend the informational meeting, up to date.

### Offer, Mandate Training

Consider offering training in emergency procedures to members, free of charge. For example, you could schedule CPR and first aid courses to be offered either in the community or at a local Red Cross location. Determine whether you should require staff to be certified in CPR and other first aid training if they aren't already.

Training courses should also cover decision-making skills, rescuer safety, and doing the greatest good for the greatest number of people in an emergency situation. Preparing for disasters in advance by developing comprehensive plans based on your community's exposure to various natural disasters and the nature of the community can make a difference in saving lives and rebuilding after experiencing a disaster.

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

**Search Our Web Site by Key Words:**  
natural disasters; emergency procedures manual; training

## RECENT COURT RULINGS

### ► No Link Between 'Inadequate' Security and Burglaries

**Facts:** A husband and wife who owned a home in a luxury planned community sued the homeowners association for negligence after their house was burglarized twice. They claimed that the association owed the owners a duty to keep the premises reasonably safe, and breached that duty by failing to hire a security guard, have monitored gates, and maintain street lights. The association asked a California trial court for a judgment in its favor without a trial, asserting that it owed no duty to protect the owners' property from theft, and even if there were such a duty, there was no causation—that is, a direct connection between the association's alleged negligence and the break-ins—in this case. The trial court agreed and ruled in favor of the association. The owners appealed.

**Decision:** The appeals court upheld the decision of the lower court.

**Reasoning:** To prevail in a negligence case, a plaintiff must show that the defendant owed her a legal duty of care, the defendant breached that duty, *and the breach was a proximate or legal cause of her injury*, the court pointed out. The appeals court agreed that the association owed no duty to protect the owners from being burglarized. Moreover, it noted that, even assuming that the association did owe a duty of care to the owners, they couldn't prove that a so-called lack of safety measures caused the two robberies—a required element for winning their negligence case.

The owners offered the testimony of a security expert who claimed that the association's failure to repair street lights, motorize and secure the gates at the access points of the development, hire security guards, or install surveillance cameras caused and/or contributed to the burglaries. However, the expert offered no factual basis for his conclusions, noted the court. The appeals court stated that the security expert's opinion was speculative at best, and that several other circumstances could have led to the burglaries.

For example, the owners had several employees who worked at their home on a regular basis and had access to the keys. The owners also frequently had delivery people come to their house. "Since the purpose of motorizing and securing the gates is to prevent only *unauthorized* people from entering the development, it would be mere speculation to conclude that the absence of those security measures con-

tributed to the loss," said the appeals court. It noted that the employees and delivery people were authorized to enter the community by the owners.

The owners also claimed that the association's alleged failure to provide adequate security measures led to other burglaries in the community. However, the association showed that the other burglaries were daytime break-ins, which couldn't be linked, for the owners' purposes, to broken street lights or gates that were not up to date; the community's gates were open during the day anyway.

■ *Girardi v. San Rafael Homeowners Ass'n*, February 2012

### ► Zoning Ordinance Didn't Trump Day Care Business Covenant

**Facts:** A planned unit development (PUD) zoning ordinance established a residential community with a homeowners association. The association's declaration had a restrictive covenant banning members from operating businesses from their homes. The association later discovered that two members were running day care businesses in their homes, which violated the restrictive covenant in the declaration. After the members refused to close their day care businesses, the association asked an Indiana trial court for an injunction—that is, a court order—prohibiting the members from continuing to operate them.

The trial court ruled in favor of the members. According to the trial court, the association was barred from enforcing the restrictive covenant banning the operation of businesses in residences in the planned development. It said that the PUD ordinance prevented the association from enforcing its restrictive covenant against the members. Specifically, the trial court concluded that restrictive covenants of a PUD, such as the community here, have the status of a zoning ordinance and that, because the PUD zoning ordinance that created this community couldn't prohibit the operation of a day care business in a member's residence, neither could the restrictive covenant. In other words, the association's restrictive covenants couldn't conflict with or override the ordinance. The association appealed, asking for a judgment in its favor without a trial.

**Decision:** The appeals court reversed the decision of the trial court and ruled in favor of the association without a trial.

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### Recent Court Rulings (continued from p. 7)

**Reasoning:** On appeal, the association asserted that the trial court erred when it concluded that restrictive covenants of a PUD have the status of a zoning ordinance. Therefore, the covenants couldn't conflict with that ordinance. It agreed with the association, stating that the PUD ordinance in this case had no effect on the association's authority to enforce its private restrictive covenants.

"The creation of a planned unit development is a legislative act, and PUD provisions are zoning ordinances," noted the appeals court. It pointed out that restrictive covenants and zoning ordinances, including PUD ordinances, are tools used to restrict the use

of property. It clarified that a restrictive covenant is an agreement between a grantor, such as the association, and a grantee, such as the members, in which the grantee agrees to refrain from using his property in a particular manner. The appeals court noted that the question in this case was whether the association could enforce restrictive covenants against the operation of a day care business in its community when an ordinance simultaneously prohibits enforcing those same provisions. The appeals court decided that the restrictive covenant existed *independent* of the PUD ordinance that established the community and could be enforced by the association pursuant to the terms of the declaration.

■ Benjamin Crossing Homeowners' Assn., Inc. v. Heide, February 2012

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