

Community Association Management *Insider*[®]

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Connecticut Condo Owner Protection Bill Passes

A new condo owner protection bill that was signed into law recently by Connecticut Gov. Dannel Malloy is expected to even the playing field when association managers and community members face off over finances. The new legislation, which passed in this year's General Assembly session, requires managers of Connecticut community associations to be certified and adhere to high ethical standards of conduct.

The Connecticut Condo Owner Coalition, a group that advocates for condo owners, supported the bill, stating that sometimes members can't trust their own managers. "When you buy a condo, you have no realization of how much independence you are giving up and how little control you are going to have over decisions that are being made," said Judith Rudikoff, a member of the Coalition.

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FEATURE

Prepare Community for Electric Vehicle Installations

If you're like most association managers, you've tried to make your community as "green" as possible by using environmentally friendly products, implementing a recycling program, or making your office "paperless." These efforts probably weren't controversial or difficult to achieve. However, the growing movement toward another environmentally friendly tool—electric vehicles (EVs)—will have a greater impact on your community. It could create friction between members who drive EVs and want to install charging stations in the community and members who want the community to stay the same.

You and the board of directors will have to address the inherent problems, both legal and financial, that you'll face as you consider EV charging station installations. It's important to understand your EV options and then begin planning the strategy you and the board will use to accommodate the needs of members who drive EVs, while ensuring that the installation of charging stations won't adversely affect the rest of the community.

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TECHNOLOGY

Follow Seven Steps to Implement Online Voting

You've probably been frustrated at some time with a lag in member participation in your community's voting process. For everything from board elections to special referendums, a community runs more smoothly when everyone feels involved and that their opinions are heard. Be aware that alienated members are the ones most likely to feel dissatisfied and resentful. That's why it's important to take advantage of the opportunity to implement an online voting process if it's legal to do so in your state.

Online voting—which has been used successfully in elections for public office, fraternal organizations, and professional associations—is a more effective way to increase member participation and reduce expenses than a paper ballot. So it's well worth your time to encour-

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EV Installations (continued from p. 1)**Expect Change in Rules**

“EVs are certainly a challenge to community associations, and managers should expect over the next few years a significant change in the way that associations consider requests for EV charging stations,” says Lionel Harris, chief executive officer of Culver City, Calif.-based property management company Harris Properties.

Whether or to what extent EV charging stations must be accommodated in planned communities is state-specific. For example, Bill SB209, recently passed by the California Legislature, prohibits an association in that state from arbitrarily denying installation of an EV station that’s within the association’s “reasonable architectural restrictions.”

“The California Legislature has decided that it’s going to aggressively support and encourage the development and use of electric vehicles, and boards are not going to be able to offer undue resistance or delay in the use of the common area for EV charging stations,” says Harris. “That’s significant because it means that an association’s previous restrictions on the use of common areas for charging stations are being wiped out,” he notes. “The impact of the change in law is starting to take place now, as boards must cooperate with owners with no unreasonable delays or prohibitions,” he stresses.

But don’t let a lack of EV legislation in your state stop you from creating a plan that you certainly will have to use in the future. It’s important to understand the rights and responsibilities that are going to be involved when your community is faced with EV issues. Be prepared to deal with prospective buyers and owners that ask to have EV stations in the community.

Community Type May Determine EV Equipment

“All managers should develop skill sets in this area, do their homework about EV charging stations, and understand what issues are involved in EV charging station installations depending on the type of planned community in which they work,” Harris suggests.

EV charging stations. One EV charging station model accommodates several vehicles that can plug into the station at one time, called a “multi-user station.” But multi-user stations are pricey as far as most communities are concerned—they typically start at \$30,000.

Instead, many associations will opt to allow “private stations,” where an individual homeowner buys and has the equipment installed in his reserved parking space. However, if that doesn’t fit, in California and states where the legislature is cracking down on associations that deny EV charging stations, the association will need to help the owner find a space in the common area for an installation.

“Because the legislature is coming down hard on the EV issue, California boards of directors aren’t going to be able to refuse to

cooperate. They'll have to get used to the idea that a "taking" of common areas—which was previously prohibited by the Covenants, Conditions and Regulations (CCRs) and a sacrosanct part of them—for charging stations could be necessary and is now permissible," says Harris. The right to deny help with EV charging station installation is now void and unenforceable by states with such laws; now, the board will have to cooperate with an owner—with no unreasonable delays.

HOAs. The two kinds of condo associations will determine EV charging station issues. In planned unit developments, where the homeowner owns his house and the land it sits on, a charging station is not as controversial, because there's less likelihood of objections about the cost and location impact on the rest of the members. The owner pays for all the electricity coming onto his lot, and he can put the station in his garage.

But managers of high-rise condo buildings face more problems because common areas are used to mount the charging stations. Along with that scenario comes the issue of costs, says Harris. Members want to know who's going to pay for the cost of making these installations and other costs associated with them.

Develop Strategy Early

"Boards need to recognize that this issue isn't going to go away and should start planning right now how to deal with it," says Harris. What kind of EV charging station installation strategy should you and the board create to comply with a "no unreasonable delay"

requirement? Harris recommends taking these steps:

Consult association's lawyer.

Check with legal counsel about your state's EV laws and the association's, board's, and your rights and responsibilities. "Legal counsel should play an active role along the way," says Harris.

Pinpoint location options. The board should analyze the physical layout of the property. Ask how and where you could possibly install charging stations in the community. Would it work best to use each owner's space, or to use a common area to pool several charging stations in one location? "The board should sort out the possibilities, which may be based to an important degree on the layout of the property," Harris points out. Having analyzed the property, the board will need to determine the degree of sophistication that it can accommodate—that is, should installing multi-user equipment now or private stations as needed be best?

Determine costs. Think about who is going to pay for what. There are costs associated with installing charging stations, including submetering to charge an owner for his use. Private installation is paid for by the owner, including the necessary insurance and incidental costs. Multi-use stations should be treated as a capital improvement that benefits the entire membership. Explore the option of apportioning the cost to members who choose to use the station, such as developing a flat-rate charge for using it overnight or during the day. And consider that the cost of electricity in municipalities goes up, not down, as usage increases, warns Harris.

Make documents reflect EV changes. Amend rules and regulations and CCRs to reflect a decision to take or change a common area to install charging stations. Remember that any action that the board takes will need a majority vote of the homeowners or have to meet other criteria in the governing documents.

Communicate with members.

What will happen when one part or all of a common area is given to a station? "As soon as you start affecting common areas, there's discord and discomfort, but boards will have to accept and deal with that," says Harris. Installation construction work in the common area and other disturbances could spark complaints. Be prepared for EVs to raise both good and bad issues from members.

You can assuage objecting members' fears by distributing amendments and other information regarding EVs to members frequently. That way you can avoid a situation where an owner who doesn't know the current status of EV policies pays for a private station or goes through other EV preparations before knowing whether she can install the equipment. Keeping members up to date allows you to advise them as they contemplate a charging station.

Whenever there's a threat of having a common area or amenity changed, there's pushback from members. After all, many of them have chosen to buy in the community based on the availability of those features. How can you handle objections from members who fear that their rights are being trampled?

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EV Installations

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“The board needs to explain to members the inevitability of what’s coming and to enthusiastically support EV developments,” recommends Harris.” The next step is to communicate with the membership on a regular basis, despite the fact that there aren’t too many choices available to members who want to resist the change,” he adds.

“Let everyone know under what circumstances you’re working,” he says. “For example, a manager in a California community would explain to members the decision of the legislature, that there could be penalties for those who have unduly prevented EV charging station installation, and the membership will ultimately end up paying those penalties if they’re assessed,” Harris explains.

Draft Narrow Licensing Agreement

Before installing a private EV charging station, an owner will

need some kind of licensing agreement with the association. It should cover insurance issues, such as whether the EV insurance will be part of the homeowner’s policy, and utilities, which may not be able to handle the load unless an electrician is hired to adjust the electrical panel. Managers must make sure that there’s contact among the contractors, insurers, and other parties who are working on the installation.

A licensing agreement should also have provisions that protect the association from losing potential buyers because of an EV charging station. Charging stations can be a selling feature if a new buyer wants one and it’s already in his parking spot or garage, but some buyers don’t want to assume the duties and obligations under a licensing agreement. That could mean that the current owner would have to remove it before selling. So the licensing agreement should require the owner to install the station, maintain it, and remove it if that’s what’s called for.

Use EV Status to Community’s Benefit

For a prospective member, the ability to install or have access to an EV charging station could be the difference between buying a home in your community or one in another. If you don’t already offer EV charging stations, but are in the planning and development stages, you can let potential buyers know. As part of the disclosures that you provide to a buyer, include documentation of any efforts that the association has made regarding EVs and charging stations.

“A significant population is now starting to use EVs, and it will continue to increase,” says Harris. “Communities should be in the planning and development stages now, and managers need to realize that this is an evolutionary process.”

Insider Source

Lionel Harris: Founder and chief executive officer, Harris Properties, 11520 Jefferson Blvd., #200, Culver City, CA 90230; www.harrismgmt.com.

RECENT COURT RULINGS

► Member Had ‘Easement,’ Not ‘Right,’ to Use Common Areas

Facts: A condo owner in an adult-only community was barred for a two-year period from using the community’s recreational facilities and common areas, which included a recreation center, a swimming pool, and tennis courts, for interfering with other members’ use of the facilities. He was also fined by the association for the behavior.

The community’s declaration gives every member “a right and easement of enjoyment in and to the common areas” of the community, but also provides that the association has the right to suspend a member’s rights and easement in those common areas for

any period during which any assessment remains unpaid, and for any period for any infraction of its published rules and regulations. The rules and regulations prohibit members from engaging in any form of conduct that “annoys, harasses, disrupts, or otherwise adversely affects” the enjoyment of the facilities and common areas for other members. The penalties include fines and/or prohibition from entering or using the amenities.

The member sued the association for “quiet nuisance,” among other claims, asserting that it improperly imposed fines against him during the two-year period, refused his requests for hearings to determine the appropriateness of the fines, and improperly

denied him access to common areas and recreational facilities. The association asked the court for a judgment in its favor without a trial.

Decision: A New Jersey court dismissed the case.

Reasoning: To establish a claim for private nuisance, the member had to show that the interference was: (1) substantial in nature; (2) intentional in origin; (3) unreasonable in character; (4) with his property right to use and enjoy the land; and (5) caused by the association's conduct in acting or failing to act. The court determined that the member's nuisance claim—based on allegations that the board denied him the use of the community's common areas and facilities—wasn't supported because he doesn't have an "ownership interest" in such areas, only a "right of easement" to use them.

The association admitted that it denied the member the use of the community's facilities and common areas, as well as the opportunity to run for elected office to the board of directors and other privileges available to members in good standing, and imposed fines. But the association argued that it was simply using all of the remedies available to it under the association's governing documents for dealing with this type of circumstance. The court agreed with the association, noting that "a condominium's board of directors is statutorily empowered to enforce the condominium's by-laws, rules, and regulations."

■ *Williams v. Leisure Knoll Association, Inc.*, May 2012

► Board Has Authority to Install Sewer System

Facts: Four of the 23 homeowners within a community association sued the board of directors, claiming that the undertaking of certain expenditures using association funds was outside the scope of the board's powers as enumerated in the declaration, bylaws, and house rules. Specifically, the group claimed that the expenditure of funds for the hiring of an engineer and the procurement of permits, designs, and surveys in connection with a sewer connection project is unauthorized by the governing documents. It also challenged the board's authority to require the members to abandon their septic tanks and connect to the New York City public sewer system, and to assess them for this change.

The group asked the court for a permanent injunction—that is, a court order—that would require the board to: (1) stop collecting and spending association funds for permits, studies, designs, installation, and connection to the New York City public sewer system; (2) produce an accounting of all assessments for the past three years; (3) refund unauthorized assessments already collected; (4) pay the members' attorneys' fees; and (5) pay the members damages for breach of contract.

The board asked the court for a judgment in its favor without a trial, requesting that the lawsuit be dismissed and that the court make a declaration that: (1) the hiring of an engineer is protected by the business judgment rule; (2) the group's demand for an accounting is moot as members are entitled only to a balance sheet and financial statement for the last three years, which has already been provided; and (3) special assessments held in reserve accounts for future improvements such as a sewer connection project are protected by the business judgment rule.

Decision: A New York court dismissed the case and issued the declaration.

Reasoning: The court decided that the board satisfied its burden of establishing that it acted within the scope of its authority according to its governing documents. The board submitted copies of the governing documents, relevant minutes of two special meetings, and the sworn affidavit of the board's treasurer that supported this authority.

The court noted that the declaration specifically gives the board the power to fix annual assessments in an amount sufficient to "promote the health, safety, and welfare of the residents related to the use of the common areas." This includes repairs, replacements, and additions, including the right to connect sewers and drainage lines in or along the street or other portions of the common areas as needed. The board is also authorized to create "perpetual easements" for the construction, maintenance, and repair of such sewers in and over each lot in the community. And the bylaws specifically obligate all unit owners to pay such special assessments for capital improvements as may "from time to time be fixed, established, and collected by the board."

■ *Dutton v. Board of Directors of Nancy Lane Home Owners Assoc., Inc.*, May 2012

Technology (continued from p. 1)

age members to use it. We'll give you seven steps that you can take to get started with an online voting process and a Model Letter: Tell Members How to Use New Online Voting Process, that you can use to inform your members about the new method available to them. Be sure to check with your attorney before enabling online voting, to make sure that it's legal for board elections in your state.

How It Works

To vote online, members may use the Internet, rather than paper ballots, by simply going to a Web site that you've designated and following the instructions you've provided. Especially for votes where members would otherwise have to attend a meeting in person to cast their ballots, online voting can be a real time-saver. Typically, a community association hires a company that specializes in online voting. The online voting company maintains a Web site, inputs community association data, designs the ballot, and performs other functions. Community association members go to the online voting company's Web site to vote.

Benefits of Service

If members object to implementing an online voting process, you should point out the benefits of this method. Remind them that online voting is just an option, not a requirement. Tell members who prefer to vote by paper ballot to call the management office and you'll provide one. Also, if you don't already have one, set up a

computer terminal in one of your common areas for members who don't have access to the Internet.

Increased voter turnout. Associations that use online voting have reported a substantially higher number of voters taking part in elections. Especially if you manage an adult-only community where retired members take long trips, visit family, or are ill, online voting allows them to participate remotely.

Eliminates mistakes. Because the computer program won't accept a vote if it's not properly made, you can avoid errors that would've complicated the election process. For example, if members are supposed to vote for three out of 10 candidates for the board of directors and someone tries to submit a ballot with four choices, the system won't accept the vote. Instead, an error message will inform the member of his error and invite him to try again.

Significant savings. By having members vote online instead of by paper ballot, you save the cost of printing paper ballots. If your governing documents allow you to notify your members of an upcoming election or other vote by email rather than by traditional mail, you'll also save money on postage. Finally, most associations pay someone to count the votes. But when your members vote online, the computer program does the count automatically.

Follow Seven-Step Process

If you would like to offer your members the option of participating in elections and other votes online, just follow these steps:

Step #1: Provide voting company with member information. Once you choose a company to enable online voting for you, you must give it each member's name, street address, city, state, Zip code, email address, and percentage voting interest.

Step #2: Assign user names and passwords. To ensure security, the company will assign a random user name and password to each community member with voting rights. Don't let the members choose their own user names and passwords. That's because people tend to choose things that are characteristic about themselves, so it's too easy for someone else to use what they know about a member to figure out his password, especially in a community where neighbors may be friendly with one another.

Step #3: Design ballots. Tell the company what you want the ballots to say, what rules to enforce, and so on. Some associations have a number of different voting districts, each of which requires a different type of ballot. Some voting procedures include split votes, renter votes, and a different number of votes corresponding to different units. Several different ballot versions might need to be created. While your community might not be as complicated as that, you'll have to work with the online voting company to customize your ballots according to your needs.

Also, you can include photographs and text. For instance, if you're holding an election for the board of directors, you can include on each of the ballots a picture of each candidate as well as a can-

didate statement. And you can include a link to any electronically stored information to which you want the voting members to have access, such as architectural drawings of proposed construction, financial data, or a full multimedia presentation.

Step #4: Choose election details. You can schedule the election to the minute, saying for instance that polls will open precisely at 7 a.m. on a certain day, and close promptly at 10 p.m. of the same day. Consider allowing members to vote as many times as they want until the polls close, but having the program automatically count only the most recent vote. If you do this, make sure that members know about this detail.

Step #5: Announce option. Tell your members about the new service the association will now offer them. The best way to do this is by regular mail. You can adapt our Model Letter for your community after checking with your attorney.

Step #6: Distribute user names and passwords. In the same letter you announce the online voting option, give each member his or her confidential user name and password for voting purposes. If your association has a good, accurate email list, the voting company can also send each member his or her user name and password electronically, along with instructions on how to vote online.

PRACTICAL POINTER: Check your governing documents to see if they require you to give members notice of the upcoming election through the mail. If they do, you can still offer online voting to your members, but you must give notice of

MODEL LETTER

Tell Members How to Use New Online Voting Process

Here's an example of a letter you can send to your members to announce the new and convenient option they have for voting on community association matters. Before you adapt this letter to meet the needs of your community, consult your attorney.

Dear Member:

The 2012 Shady Acres Community Association Board of Directors election is now underway. All votes must be submitted by **July 13, 2012, at 11:30 p.m., EST.** To accommodate everyone's busy schedules and encourage all of our members to participate in the voting process, Shady Acres is pleased to announce that for the first time, members will be able to cast their votes by computer. The process is simple, safe, and convenient. You, as a member of Shady Acres, are the only one with access to the ballot. What's more, if you don't have access to a computer with an Internet connection, you can come to the community center any time between 7:00 a.m. and 10:00 p.m. from July 2 up until the polls close on July 13 and use the computer set up there. During the final two days before the polls close, please call my office at *[insert tel. #]* to reserve a 10-minute block of time to cast your ballot.

If you still prefer to vote by paper ballot, please call my office, and a paper ballot will be sent to you. To vote electronically for Shady Acres 2012 Board of Director candidates, just follow these easy steps: *[insert the procedures recommended by your online voting company, including user name and password]*.

If you have any problems voting, or if for any reason you aren't sure if your vote has been counted, please contact us. You can send an email to: *[insert email address]*. Please make sure you describe the details of the problem you are encountering and include your telephone number. Someone will be in touch with you to help resolve the problem. Remember, **July 13, 2012**, is the last day to cast your vote. Don't miss your opportunity to help determine who will sit on the Board of Directors for Shady Acres!

Thank you.

Yours truly,
Jane Manager

the upcoming election and distribute user names and passwords by conventional mail. You'll also have to give all members the choice of voting online or by traditional methods. Consider whether the association should amend the governing documents to simplify the voting process, including eliminating the use of paper ballots entirely.

Step #7: Hold your vote. On the chosen day, hold the election. Whomever you choose to administer the vote will keep a running tally, tabulate the results, and announce the winners. You don't need to collect actual written signatures because the federal Electronic Signature Act makes a typed name valid as a signature.

Connecticut Condo Bill (continued from p. 1)

Legislators passed a second bill that gives condo owners the right to display religious articles on their doors. The bill stemmed from a controversy that

ensued in March after a condo board in Stratford ordered a member to take a small Jewish symbol off her doorpost or be fined \$50 a day. The condo board said it was against association rules, but later relented after the Anti-Defamation League became involved.

DID YOU KNOW that the number of housing discrimination cases filed each year keeps rising?

... and that housing providers like you are paying higher penalties and settlements — sometimes over \$1 million?

Take FAIR HOUSING COACH's Pop Quiz:

- Q** Can someone who *isn't* disabled sue for disability discrimination under the Fair Housing Act?
- A** Yes, according to a federal court in Florida, in *Falin v. Condo Assn. of La Mer Estates, Inc.* (Nov. 2011).

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- ◆ Complying with Fair Housing Law When Dealing with a Hoarding Problem
- ◆ Trend Watch: Dealing with the Rise in Multigenerational Households
- ◆ State Law Roundup: Checklist of State Fair Housing Protections



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