

Community Association Management *Insider*[®]

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Seattle Association Asks City for Traffic Light Quid Pro Quo

While Fauntleroy Community Association (FCA) board members say they're fine with the Seattle Police's plan to install a fixed speed-monitoring/ticketing camera in the Gatewood Elementary school zone on nearby Fauntleroy Way (part of the association's property), they've asked for a current southbound warning light to be moved from the area, in exchange. The FCA made its request to the police department in a letter, pointing out that the current light isn't effective for slowing down traffic near the community. The installation of the new camera is expected within a few weeks, before school begins. Speeders caught by the camera face \$189 tickets. The police department has yet to respond to the quid pro quo request for the other light's removal.

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FEATURE

Use Declaration to Control Modifications to Units

When a member makes a modification either to the interior or exterior of his unit without notifying the board, it could harm your community. For example, low-quality or hasty and ill-advised construction can drive down property values, increase the premiums on your community's liability insurance, or even render important warranties void. And some types of work, such as a new roof deck, if not done right, can lead to injuries and increase your community's exposure to personal injury liability.

How can you prevent both small inconveniences and serious ramifications arising out of a member's modification? Include in your declaration language that forbids any significant modifications by members without prior written board approval. Like our Model Declaration Clause: Require Prior Written Board Consent to Unit Modification, your clause should cover 10 key issues.

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REPAIRS & MAINTENANCE

Follow "To Do" Checklist to Prepare Community for Winter

With the summer months coming to a close, it's time to start thinking about preparing your community for winter. Although winter weather may seem like it's a long way off, you'll need to take steps in the fall to get ready for harsh weather or other winter challenges, depending on where your community is located. Because there's always a lot to do during the fall, it's a good idea to have an annual checklist of maintenance tasks that you can refer to to "winterize" your community.

- ❑ **Winterize pool and clubhouse.** Unless your community pool stays open year-round, you'll need to winterize it in the fall. In addition to cleaning and covering the pool, make sure all pool furniture is securely stacked and stored for the following summer. Also, if you have a clubhouse or restroom that's closed when the pool is closed, make sure to winterize that too, which includes putting antifreeze in the toilet bowls and closing off the water lines. Remember to take down nets on tennis and basketball courts. The winter can be hard on the nylon that these nets are usually made of, so take them down before the weather turns cold.

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Q & A

Preventing Wheelchair Damage to Three Common Area Spots

Q Several community members, and, occasionally some guests, use wheelchairs. Because of the size and design of some of the common areas, the walls have been dented, paint has been scratched on the walls and doors, and corners and doorways have been nicked. There has also been damage to carpets and wood floors from wheelchairs. It has been expensive to repair wall and floor damage caused by those wheelchairs to the common areas. What can I do to prevent this damage?

A Fortunately, by installing a few inexpensive devices, you can prevent most of this damage. Have your maintenance staff install these devices to protect the three parts of common areas that most frequently take abuse from wheelchairs:

Doors. Kick plates are protective panels, often made of stainless steel. They go on the lower half of doors, where footrests are likely to hit. Depending on their size and type of material, they start in price under \$10. Corner guards protect the corners from being nicked by wheelchairs. These are plastic, vinyl, or metal strips designed to fit on protruding 90-degree corners. Prices range from \$20 for 10 four-foot plastic or vinyl strips, to up to \$60 each for more expensive metal guards.

Walls. Wall guards are plastic, vinyl, or metal strips or panels that attach to walls to protect them from damage by wheelchairs. Prices range from \$30 to \$80, depending on the size and type of material.

Floors. Floor mats are plastic, vinyl, or rubber mats, sometimes clear, designed to cover wood flooring or carpeting and protect it from wheel damage. Prices vary widely—depending on size, quality, material, safety features, cushioning, and other factors—from perhaps as little as \$20 to several thousand dollars for commercial-quality mats. But be careful: Floor mats that are installed by entryways can be dangerous for people with disabilities. For example, people using walkers can trip over them. So if you do use floor mats, make sure you purchase only high quality, appropriately sized mats that grip the floor, allow easy transition on and off them, and are firm enough for wheelchairs to maneuver on them.

Be aware that attractive, nonindustrial devices aren't easy to find. Try checking with local hospital supply companies or maintenance distributors. And when you order these devices, find out if they come with assembly or installation instructions so your maintenance staff can install them properly.

Unit Modifications

(continued from p. 1)

Set Prior Consent Requirement

Requiring members to get board consent before making any modifications to their units is of key importance on several levels. First, it prevents low-quality workmanship. Unqualified contractors might build something that's unsafe and results in liability for both the member making the modification and the community association. Also, problems from shoddy workmanship can affect other members if a contractor damages other units in the course of its work.

Even if it doesn't cause obvious damage, if a contractor builds something improperly, it could affect other building systems. For instance, an improperly installed heating system has the potential to overload the building's electrical capacity. Requiring prior consent also helps you maintain control over construction work. Including appropriate language in your declaration will allow you to exert control over noise, dust, safety, and the hours during which work may be done.

One of the attractive features of a planned community is a uniform architectural and aesthetic theme. That could be ruined if you don't get to see plans that would disrupt that uniformity before they're carried out. Don't let a poor appearance from an unapproved modification affect property values.

PRACTICAL POINTER: A prior consent requirement may prevent you from inadvertently setting a dangerous precedent. Allowing

modifications without board consent can lead to future arguments; a member might say that the board has legally given up its right to control the construction process or might accuse the board of selective enforcement.

Address Key Issues in Clause

Imposing these important restrictions on modifications can help you avoid the problems that spring up from unapproved work, says Massachusetts attorney and *Insider* board member V. Douglas Errico. Address these key issues in your declaration:

Exterior modifications. Balconies, porches, and other structural modifications are the most important items to exert control over because faulty construction can lead to injuries. Also, careless work can adversely affect certain warranties. For example, if a member builds a roof deck that punctures a rubber roof, it could nullify the roof warranty. So your declaration should forbid such modifications, unless the member gets the board of directors' prior written consent [Clause, par. A(1)].

Remember also that certain kinds of construction can increase your community's exposure to personal injury liability and to maintenance responsibilities. For that reason, some community associations require the member who wants to build something, such as a deck, to sign a contract agreeing to assume all responsibility for maintaining the structure in good condition and to be solely responsible for any possible personal injury or property damage that results. It's a good idea to record such a contract with the Registry of Deeds, County Clerk's Office,

or whatever the comparable office is called in your area, suggests Errico. By doing this, the contract becomes binding on any future owners of that unit, he notes.

Lights and other exterior hardware. Nonstructural items, like door knockers and lights, should require board approval before being added. Changes that are unattractive or architecturally inconsistent can drive down property values. An unsightly community is less visually appealing and therefore less desirable. So state in your declaration that no modifications to exterior lights, door knockers, or other exterior hardware may be made without the board's prior written consent [Clause, par. A(2)].

Painting or attaching decorations. Whether affixed to the exterior of a unit or to the interior, but visible from outside, these items affect the appearance of the community and therefore, potentially, the property values [Clause, par. A(3)]. If a member paints her unit bright purple in a community comprised of white buildings, it may well have a negative impact on the community's appeal.

Don't forget that along with your authority comes the obligation for you to be reasonable in determining what's allowed and what's not. Use your discretion and common sense in deciding which decorations to ban. Not *everything* that's nonuniform is unappealing.

Visible interior decorations. Members expect to be allowed to decorate the interior of their units any way they wish. However, some interior decorations are visible

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Unit Modifications

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from the outside and may detract from the building's appearance. For example, a poster with objectionable images hung inside the unit, but visible from the outside, may well cause problems within your community.

To avoid this kind of situation, Errico suggests including language in your declaration that obligates the member to change any interior decoration at the board's request if the decoration, in the board's "reasonable judgment," detracts from the aesthetic or architectural quality of the community [Clause, par. B]. Also, only require the member to take "reasonable measures" to correct the problem.

Interior structural modifications. Your declaration should forbid structural changes within units because structural changes might include weight-bearing walls. Done incorrectly, this type of modification can be extremely dangerous [Clause, par. A(4)].

Say that members may make nonstructural changes as long as they don't overload any building systems, such as the electrical capacity [Clause, par. C]. Again, be reasonable when considering a request. In a past New Jersey case, *Billig v. Buckingham Towers Condominium Assn. I, Inc.*, a member in a luxury high-rise condominium modified the heating and cooling system in his unit. As part of the installation, the member put two small compressors, which weren't visible from the building's exterior, on his balcony.

The installation also required drilling two one-inch holes in the

bottom of the unit's aluminum window frames, although the holes were caulked afterward. The association forced the member to stop work in the middle, and the member sued for the right to continue. The court ruled that the modification didn't affect the building systems, the compressors couldn't be seen or heard, and the drilling of two holes was insubstantial. Therefore, the court said, the board's refusal to permit the modification was unreasonable, and the member was allowed to complete the installation.

Licensed and insured contractors. You'll want to make sure that the contractor hired to do the work is licensed and fully insured. Should the contractor cause damage to another unit, you want to know it has the insurance coverage to pay for its mistake. A member may not have much experience with local contractors and might hire someone you know to be unreliable or unprofessional. By having a say in the choice of contractor, you can make sure the contractor is qualified to do the job. So require proof from the contractor of both these requirements [Clause, par. D(1)].

Necessary permits, approvals. Even if your board approves a modification, confirm that the proposed construction is legal [Clause, par. D(2)]. Errico knows of a Massachusetts case in which a court ruled that a balcony had been built illegally, despite having received board consent. In that case, *Lilley v. Rich*, the community association narrowly avoided having to pay both damages and attorney's fees for having allowed it.

Necessary association documents. Certain types of work may

require changes to your declaration. For instance, because floor plans of each unit are recorded as part of the declaration, when a member wants to make a change to the unit's layout, an amendment to the declaration is necessary. To make this amendment, the community association must have a copy of the new floor plans and a proposed amendment to the declaration. To ensure you get this kind of documentation, your declaration should say that members must provide "reasonable and necessary documents" to amend the declaration [Clause, par. D(3)].

Reasonable advance notice before work. Whatever problems or issues might arise due to the proposed construction, the time to deal with them is in advance. You must have time to review the proposed construction with your attorney and to consider any other ramifications. For example, you should confirm that the proposed construction won't adversely affect your community's insurance coverage. Sometimes, a modification—for example, a fireplace—can increase the premiums on your community's liability insurance [Clause, par. D(4)].

Compliance with board's reasonably imposed conditions. Conditions can include the days and hours during which construction is allowed to take place, the date by which construction must be completed, and the precautions that the contractor must take to protect other residents. Your attorney might create a document for the contractor to sign, committing it to abide by the board's rules. To bind the member to any board conditions, you must refer to them in your declaration [Clause, par. D(4)].

MODEL DECLARATION CLAUSE

Require Prior Written Board Consent to Unit Modification

Here's a Model Declaration Clause that you can include in your declaration to protect your community from declining property values, personal injury liability, and other problems caused by unauthorized modifications made by members to their units. Show this clause to your attorney before adapting it for your own use.

MODIFICATIONS TO UNITS

A. ARCHITECTURAL INTEGRITY. The architectural integrity of the Building(s) and the Units shall be preserved, and to that end:

1. **Exterior Changes:** No balcony, porch, garden or yard enclosure, awning, screen, antenna, sign, banner, or other device, and no exterior change, addition, structure, projection, decoration, or other feature shall be erected, applied to, placed upon, or attached to any Unit, or any part thereof, on the Building(s) or upon any other Common Element without, in each instance, the express consent thereto in writing by the Board;
2. **Exterior Hardware:** No addition to, or change or replacement of, any exterior light, door knocker, or other exterior hardware shall be made without, in each instance, the express consent thereto in writing by the Board;
3. **Painting and Decals:** No painting, attaching of decals, or other decoration shall be done on any exterior part or surface of any Unit or on the interior surface of any window without, in each instance, the express consent thereto in writing by the Board; and
4. **Interior Structural Changes:** No interior changes that are structural in nature shall be made without, in each instance, the express consent thereto in writing by the Board.

B. DECORATION OF UNIT. The restrictions listed in paragraph A, above, shall not be construed to restrict a Member's right to decorate his Unit as he should so determine; provided, however, that to the extent such decoration is visible from the exterior of any Unit and detracts, in the reasonable judgment of the Board, from the aesthetic or architectural integrity of the Building(s), the Member may be required to undertake such reasonable measures as the Board may determine to ameliorate such detraction.

C. NONSTRUCTURAL ALTERATIONS. The restrictions listed in paragraph A, above, shall not be construed to restrict a Member's right to move, remove, alter, or change any interior, nonstructural wall or partition, or change the use and/or designation of any room within his Unit; provided, however, that such change shall not adversely affect the structural integrity of the Building(s) or overload the Building(s) systems.

D. ADDITIONAL REQUIREMENTS. With the exception of decorations, as defined under paragraph B hereof, prior to commencing any work on his unit, a Member must provide to the Board the following:

1. Proof that the contractor(s) is licensed and fully insured;
2. All necessary and proper permits and approvals from appropriate governmental authorities;
3. All reasonable and necessary documents in amendment of the Declaration, and all plans to be filed therewith; and
4. Reasonable advance notice and satisfaction of all conditions as may be reasonably imposed by the Board.

It's crucial to make sure that somewhere in your declaration and/or bylaws you say that the association can recover any losses incurred as a result of members'

unauthorized modification of their units, including reasonable attorney's fees and costs incurred to enforce the covenant and/or rule.

Insider Source

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DOS & DON'TS

X Don't Forget to Ban Violent Behavior in Employee Handbook

Include in your employee handbook a ban against violent behavior by employees, to head off problems and put your employees on notice that this behavior won't be tolerated and that there will be serious consequences. Tell employees what's unacceptable, and draw a clear line that they may not cross without being fired. Include horseplay as part of prohibited conduct; it's employees' most common defense for unacceptable behavior.

Make it clear that you will immediately dismiss any employee who you believe poses a threat to others, and don't hesitate to do so if you have solid evidence. An employee who behaves violently or threatens someone is unfit for the job. Don't wait

until the employee assaults someone. While you may still end up in court to defend your decision, your potential liability for keeping a dangerous person employed is greater than your potential liability for wrongful dismissal.

✓ Document Slip-and-Fall Hazards

If anyone reports a slip-and-fall injury at your community, take pictures of the hazard on which the person claims to have slipped. Do it right away—as soon as you hear about the incident—just in case the person sues you later. Photographs may help you prove in court that there was no hazard or that it was not as bad as claimed. And even if no one exaggerated or lied, you can show the pictures to your attorney, who can advise you on whether to settle the case.

Repairs & Maintenance (continued from p. 1)

- ❑ **Do touch-ups and repairs.** Fall is a great time to touch up the paint around your property. Check to see if items like signs, parking lot stripes, curbs, and outdoor trash areas need to be painted to protect them from winter weather damage. Walk around your property and inspect the sidewalks for cracks and holes. Winter can be very hard on concrete and asphalt, so patch any cracks you find before the weather gets cold enough to freeze. Once moisture freezes in the cracks, the problem will worsen every day.
- ❑ **Get rid of birds' nests.** Believe it or not, birds' nests can cause major maintenance headaches. Birds often build their nests in out-of-the-way places like roof eaves and dryer vents. Nests on eaves can cause drainage problems and roof leaks; nests in dryer vents may create a fire hazard. So to be on the safe side, give your property a thorough inspection in the fall to locate and remove any nests built over the spring and summer.
- ❑ **Stock up on lightbulbs.** With fall come additional hours of darkness, which means that both interior lights as well as outdoor lights will be used for longer periods of time. So make sure you have plenty of interior and exterior replacement lightbulbs on hand.
- ❑ **Cover HVAC lines.** Make certain that all HVAC lines are covered properly with Insul-Tube or another insulation product. Your landscapers may have chewed through the Insul-Tube with their lawn mowers or grass trimmers over the summer.
- ❑ **Disconnect hoses, turn off outside water supply.** If your community is located in a cold climate, be sure to disconnect all water hoses from the outside faucets in the fall. If left outside during the winter, water in the hoses can freeze and cause the hoses to crack, making them useless for next year. Also, turn off the water supply to your outside faucets. During the winter, cold air can get into the faucet and freeze any water left in the pipes, which may result in a broken water line. As an extra precaution, you may want to cover your outside faucets with an insulating cap or cover. These can be found in most home and garden supply stores. This is also a good time to disconnect any decorative fountains or waterfalls your community might have. Bring all fountains in out of the ponds, and shut down the water supply.

- ❑ **Clean gutters and chimneys.** Make sure your gutters are clean and clear of leaves and other debris before winter begins. Clogged gutters can prevent water from draining properly. Water overflowing the gutters may leak into your community's buildings. Water left in the gutters during the winter may freeze, making the gutters much heavier than normal and possibly causing them to break and fall. Backed-up water in the gutters can also cause wood on the roof to rot. If your community has fireplaces, fall is the time when your members may start using them. To prevent fire hazards, make sure your members' fireplace chimneys are clean and clear of debris.
- ❑ **Inspect and clean heating equipment.** Fall is the time to inspect and clean your heating equipment, especially your furnace filter. You probably haven't had the filter cleaned since last fall. A clean filter means your furnace will run efficiently and cleanly, with little or no pollution output. Also, if your community uses heat pumps, check that both stages of heat are working before the heating season starts. Turn on the heat to find out whether stage 1 is working, and then turn up the thermostat as high as it will go to find out whether stage 2 works.
- ❑ **Prepare for snow removal needs.** Before the first snow falls is the best time to make sure you have your snow removal contract in place for winter. You don't want to be caught off guard by an early snowfall and have no snow removal contractor to call. Aim for having a snow removal contract signed by Sept. 1. Also, make sure your community is fully stocked with sand and salt so you can take care of parking lots, sidewalks, and stairs, for example, after winter storms.
- ❑ **Make appropriate landscaping changes.** Once fall arrives, you'll also have to deal with the changing needs of your community's landscaping. Flowerbeds need to be cut down and turned, and bulbs need to be fed. You also need to prune your bushes and cut back your perennials. Some associations replace their annuals with mums.
- ❑ **Get ready for budget preparation.** If your association is on a Jan. 1 fiscal year, now is the time to begin working on your new budget. To help prepare the budget, call your vendors to get an idea of what their prices will be for the coming year. Also, talk to your utility companies to see if they anticipate any increases.

RECENT COURT RULINGS

► **Member's Hobbies Must Be of "Reasonable" Scope**

Facts: An association made a series of complaints against a member because he violated multiple provisions of the association's declaration. Specifically, the violations included the member's storage of logs and trees on his property for commercial use, running a dog breeding business on his property, and maintaining a compost pile that emitted a putrid odor. After the member refused to remedy the violations, the association sued him in district court. The district court ruled in favor of the association, and the member appealed.

Decision: An appeals court upheld the decision of the lower court in favor of the association.

Reasoning: On appeal, the member claimed that his dog breeding operation was simply a hobby, that he was storing logs and trees on his property as a "favor" for a friend, and that it was his right to have a com-

post pile on his property. The association asserted that its declaration and governing documents made the member's property, and the other lots in the community, zoned for residential use only, and, therefore, commercial businesses were banned.

The appeals court said that the evidence—including signs the member had posted on his property and at local businesses advertising his dog breeding business, and signs advertising the availability of his land for log and tree storage—supported the association's allegations. The member also didn't have the right under the declaration or governing documents to keep compost on his land that was large enough to constitute a nuisance for his neighbors. Because of that evidence, the appeals court determined that the association had the right to demand that the member stop those activities. In response to the member's argument that the association was restricting him

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Recent Court Rulings (continued from p. 7)

from storing any items on his property or engaging in a hobby that he enjoyed, the appeals court specified that the member could keep “enough wood or logs on the property to have fires in his fireplace,” but that an excess of wood larger than that was unnecessary and a violation of association rules. It also addressed the member’s complaint about his breeding hobby by

noting that keeping several dogs as pets was acceptable, provided they didn’t cause a nuisance, but that keeping “50 to 60 dogs” as he had previously for the breeding business was a violation. The appeals court also ordered him to remove the compost pile and keep only as much compost as was “reasonably” necessary for recycling purposes.

■ Village of Barrington Hills v. Maksymonko, June 2012

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