



Community Association Management *Insider*[®]

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INSIDE THIS ISSUE

Model Letter: Tell Members a Special Assessment Is Necessary	3
Recent Court Rulings	4
▶ Slip-and-Fall in Remote Area Not Foreseeable by Association	
▶ Board Had Proof of Outstanding Common Area Charges	
Model Form: Get to the Bottom of Employee Turnover	7

Finding Solutions to Live-Work Condo Challenges

The development of so-called live-work condominium buildings is picking up speed throughout the country in response to the proliferation of professionals who work from home. The condo hybrid creates a space that's suited to work and residential needs. But the trend is not without its challenges: Some developers have experienced delays because building codes in most municipalities don't yet have provisions for these residential-commercial hybrids; the type of work the unit owner can engage in could also be subject to municipal oversight.

But the demand for live-work space isn't slowing down, and so developers have been finding solutions to these problems. While this niche real estate market caters to the home-based professional, there's no official definition of what constitutes a "live-work unit." Depending on the vision of the developer, a live-work condo can look like a traditional unit with simply an additional room that can be used as an office. Bigger, loft-style apartments offer more flexibility as far as floor plans and can give unit owners leeway to personalize their layout if the design includes moveable walls that can

(continued on p. 8)

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FEATURE

Get Members Ready for Special Assessment

Although the recession has passed, members of your community may still be struggling or just getting back on their financial feet again. Some may be stretched to pay for basic association costs. So announcing a special assessment might be the last straw. And even members who can afford a special assessment won't be happy to pay unless it's absolutely necessary. After all, one of the great features of belonging to an association is the opportunity to share with other members the cost of amenities and services that members couldn't afford on their own if they weren't living in a planned community. Asking members for additional money for a special assessment, no matter how legitimate it is, must be done tactfully.

Regardless of whether you need a membership vote for the assessment or the board can impose one on its own, how you tell your members about it can make a big difference. How you break the news about an assessment that requires a membership vote can either build or erode support. For an assessment that can be imposed by the board, how you do it can lead to a harmonious sense of community among members who try to understand the need for one—or it can sour members against you, especially those who may already be upset about other association issues.

(continued on p. 2)

DEALING WITH EMPLOYEES

Increase Employee Retention with Exit Interview

In the not too distant past, it wasn't uncommon for an employee to work for the same company for many years, or even for her entire career. But today, the average worker stays at each of her jobs for just 4.4 years, according to the most recent data from the Bureau of Labor Statistics. And the expected tenure of the work force's youngest employees—the so-called "Millennials" who were born between 1977 and 1997—is about half that.

During your association management career, you'll inevitably lose employees, which can be a nightmare if you're already stretched to

(continued on p. 6)

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Special Assessment (continued from p. 1)

Soften the blow by telling your members, in a way that will make it easier for them to accept, that the board has come to the conclusion that a special assessment is necessary, and then outline the details in a letter like our Model Letter: Tell Members a Special Assessment Is Necessary, to help your members cope.

Communication Is Crucial

When informing your members that the board has come to the conclusion that a special assessment is necessary, remember to communicate early and often. "The minute you begin seriously considering a special assessment, tell the membership," advises New Jersey attorney David Byrne. You can do this by letter, email, or even at a special meeting called for that purpose. Early notice lessens the blow, opens up the topic for discussion and debate, and gives members time to figure out how they're going to handle the new expense when it becomes a reality.

Frequently, managers and board members make the mistake of assuming that just because community leaders know what's going on, everyone else does. By taking the time to include the members early in the process, you'll best be able to let the news sink in and slowly build support for the assessment [Ltr., par. 1].

Demonstrate Importance, Need

Show how the special assessment will affect day-to-day life in the community. Members are less likely to accept a special assessment if they don't understand the need for it. So even if it's not for something tangible, such as filling a crack in the swimming pool, you must explain how it will affect members' lives [Ltr., par. 2].

Emphasize the fundamental fact that the board acts in the best interests of the community as a whole. Members who aren't able to afford the special assessment might be very vocal about that. But while it's okay to sympathize with them, you can't make your decisions based on that sympathy. Remember that you're working for the interests of the community as a whole and that means doing what's best for all members in the long run [Ltr., par. 3].

You should also prove why it's a sound business decision. At the same time you first tell your members about the special assessment, explain why the association needs the money. Review all of the options you considered for raising the money, and make a convincing case for why a special assessment is the best available option [Ltr., par. 4].

Be prepared to defend your decision in a calm, professional manner, even if the atmosphere becomes emotionally charged. If you can't make a compelling case for why a special assessment is your best alternative, it could be because you've missed something. So be sure you have a strong case before going to your members with the news. "It's hard to get support for a special assessment," says Byrne, "but you can do it if you can explain why all the other avenues looked at weren't chosen."

(continued on p. 4)

MODEL LETTER**Tell Members a Special Assessment Is Necessary**

Because every situation is different, there's no boilerplate letter that all association managers can use to inform members of the need for a special assessment. Still, there are common threads in what an effective letter should cover. The following letter incorporates key items that should be included when making the case for a special assessment. Early communication, showing how the special assessment will affect day-to-day life in the community, proving why the special assessment is a sound business decision,

offering payment options (if applicable), advising members to check their homeowners' insurance policies to see if special assessments are covered, promising to adjust future reserve needs in light of the special assessment, and assuring that members will be informed as the project proceeds should be part of your strategy for gathering support for the special assessment. Show this letter to your attorney before adapting it for use in your community.

Dear Member:

The 2013 Shady Acres Community Association Board of Directors has spent the past few weeks considering how to deal with the mold in the clubhouse. Although no final decision has been made, we wanted to let all of you know that we consider it likely that we'll need a special assessment to raise enough money to fix the problem.

We're well aware of how unwelcome a special assessment is at any time and are also sensitive to members' financial concerns. However, mold is a serious problem for all of us as it can lead to health problems.

Fortunately, XYZ Inspections, a mold remediation company, has assured us that we've caught the problem early enough so that no one could have been harmed yet, and that we can get rid of the mold if we act quickly. To protect everyone in the Shady Acres community, we've decided to do just that. In addition to the health benefits of eliminating the mold, there are financial benefits. The community association—and derivatively, its members—could be held liable in a lawsuit if we fail to deal with the problem and someone subsequently gets sick.

In addition to seeking a special assessment, we have considered several other financing options. We have spoken with community association lenders and calculated that over the term of a seven-year loan, that option would cost the association \$122,400 more than a special assessment will cost. We also considered doing the work over a longer period of time and reserving for it as we go. However, the second option leaves the members and employees of Shady Acres too vulnerable to sickness and the association too vulnerable to liability. We must deal with the problem immediately.

No final decision has been made yet, but we hope to do so within [insert period of time, e.g., a week]. [Optional: If a special assessment is decided on as the most prudent course of action, we will allow all members to choose to pay their share: in one lump-sum payment; in three separate payments made over the course of one year; or in 36 monthly installments, which will be added to the member's monthly bill.] [Optional: Although no specific plan has yet been approved, we would hope to offer a discount to those members choosing to pay in one up-front payment].

We also recommend that all members of Shady Acres review their homeowners' insurance policies, as some policies cover the cost of special assessments.

Again, the board of Shady Acres regrets that the need for a special assessment has arisen; however, the appearance of mold is an unexpected circumstance that could not have been foreseen. It was only because of the diligence of our maintenance staff that we were lucky enough to catch the problem as early as we have, while we still have the opportunity to correct it before any harm is caused. And because we had reserved funds to replace the carpeting in the clubhouse two years from now in any event, we will be able to defray some of the cost. Also, we won't have to replace the carpeting again for another six years.

Rest assured that, as we go forward with correcting the mold problem in the clubhouse, we will keep all of you informed. We hope that you understand the need for this action, difficult as it will be on all of us. We ask for your understanding and support, as well. We would not want to turn to the more expensive alternative of a community association loan. We want to do what is best for all of us, and we know that you want the same.

Yours truly,
Jane Manager

Special Assessment

(continued from p. 2)

Consider Offering Payment Options

As long as you don't make them too complicated, members appreciate having payment options, such as being offered a discount as an incentive if they pay the full amount up front, or being able to make installment payments over some designated period of time if they can't pay all at once. Not all associations are in the position to offer payment options. Find out whether this is financially and practically feasible for your community, and consult your attorney on how to implement this in your specific situation, if it is [Ltr., par. 5].

It's important to be aware that while giving members the option of paying over time is convenient, if it's not done properly, you could be seen as penalizing members who choose to pay over time or can't pay early to take advantage of a discount.

And once you determine the amount of money you need to raise and apportion it according to each member's percentage interest in the community association,

each member must be allowed to pay that amount over the most extended payment option.

PRACTICAL POINTER: Members shouldn't automatically assume the worst—that they'll have to pay for the special assessment completely on their own. Tell members to check their homeowners' insurance policies to see if they cover special assessments [Ltr., par. 6]. Some homeowners' insurance policies cover special assessments, subject to a deductible. So encourage your members to read their policies. If a member feels his policy is too muddled with legalese for him to understand it, tell him to let an attorney or insurance agent review it.

Stress Changes to Reserve

Remind members that because of the special assessment, you'll adjust future reserve needs [Ltr., par. 7]. If, for example, your special assessment is to pay to repave sidewalks three years before you'd expected to, you no longer need to reserve funds on that three-year timetable. Emphasize this to your members so they can see a bright side to the expenditure.

If you've kept reserves intentionally low for years, point this out to your members when you

announce the special assessment. More affluent communities tend to prefer special assessments to large reserve funds. Because they're confident that they'll have the means to pay for repairs whenever the need arises, they don't feel as compelled to plan ahead. Senior communities are similar. Older members tend to take a shorter-term view of life in general. As a result, many seniors hesitate to fund a big reserve for something they feel they may never get to enjoy.

Promise Continued Communication

Assure your members that you'll keep them informed of progress on the work being financed by the special assessment, as it proceeds [Ltr., par. 8]. In these reports, you can also tell them specifically how funds are being disbursed. You can do this by publishing articles in the community newsletter or by sending letters and/or emails. The key is to make visible what they're getting for their extra expense. ♦

Insider Source

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RECENT COURT RULINGS

► Slip-and-Fall in Remote Area Not Foreseeable by Association

Facts: A condo owner and her neighbor had a disagreement. In retaliation, the neighbor "hid" a ceramic planter that belonged to the owner on a grassy, sloped area away from their units. The area wasn't intended for use by owners or their guests. While retrieving her planter the owner slipped and fell on the grassy slope, which was waterlogged from a rainstorm the night before. She broke her ankle. She sued the association and its management company.

The owner claimed that the association had "negligently, carelessly, and recklessly failed to maintain, manage, operate, inspect, clean, and control the premises." She claimed that the management company was negligent by "allowing a dangerous and hazardous condition to exist." The owner produced copies of three letters she had previously written to the association complaining about poor drainage outside her front door and on the walkway leading up to the building that froze in cold weather. She admitted

that she had never complained about poor drainage in the area where she fell.

The association first stated that the negligence claims were barred by the bylaws, which provided that the association would be liable for an owner's injuries only in the case of gross negligence. It then showed that it had hired a contractor to fix all drainage problems that led to the unsafe conditions the owner had complained about.

The management company said that its duties didn't extend to making sure that hazards didn't exist in areas on the property. It said that its particular duties to this association were mainly administrative and that the board members would follow up on these types of issues.

The association and the management company each asked the trial court for a judgment in its favor without a trial. The trial court granted their requests. The owner appealed.

Decision: A New Jersey appeals court upheld the trial court's decision.

Reasoning: The appeals court determined that the management company hadn't been grossly negligent. That was because it wasn't responsible in the first place for making sure that the area of the property where the owner fell was safe. Both the association and the management company had testified that its function was to report complaints about conditions and repairs to the board.

The association also couldn't be found liable for gross negligence, the appeals court said. It wasn't aware of any other complaints regarding drainage problems aside from the owner's complaints about the areas near her unit, which had been promptly fixed.

The owner argued that the lawn area was open and accessible and that there weren't signs to indicate that it shouldn't be used. But the appeals court said that it wasn't foreseeable to the association that the owner would need to access the out-of-the-way grassy area to retrieve a planter that had been hidden there by an angry neighbor. Additionally, the condition of the grassy slope was discernible, but the owner failed to exercise reasonable care and common sense when climbing it after she realized it was soggy and slippery.

"On this particular occasion, what gave rise to the fall was something that was not foreseeable—that a

neighbor would have an altercation with the plaintiff and remove something to an area that was beyond the scope of normal movement," said the appeals court. Furthermore, the owner failed to establish that the management company negligently performed its administrative responsibilities.

- Costa v. Shadow Lake Condo Assn., September 2013

► **Board Had Proof of Outstanding Common Area Charges**

Facts: A condominium board sued the owners of a condo to foreclose a lien issued for the nonpayment of common charges, and to recover the common charges and fees the owners allegedly owed. The owners counterclaimed, asserting that the board had no right to foreclose. The owners argued, among other things, that they already had overpaid common charges and that the board had "constructively evicted" them.

The board asked the trial court for a judgment in its favor as to liability and to dismiss the owners' claims. The requests were denied. The board appealed.

Decision: A New York appeals court reversed the trial court's decision.

Reasoning: The board had provided evidence of its authority to collect certain assessments of common charges and fees, invoices reflecting the owners' account, and an affidavit by the board president attesting to the owners' failure to pay the balance on the account.

The owners weren't able to produce any evidence as to whether they fully paid, or overpaid, the common charges owed to the board. Because the owners couldn't prove that they didn't owe common charges and fees, the trial court should have ruled in favor of the board, said the appeals court.

In addition, the constructive eviction claims should've been dismissed, the appeals court stated. That was because the owners failed to show the existence of a landlord-tenant relationship between the parties and that they had, in fact, abandoned the premises—the two requirements that a party claiming constructive eviction must meet. ♦

- Board of Mgrs. of Brightwater Towers Condominium v. Cheskiy, September 2013

Dealing with Employees

(continued from p. 1)

the limit for time or working with a tight budget that will make the hiring process difficult. Employee job-hopping can create problems for employers, but try to use losing an employee as a learning experience to figure out what your employees enjoy about their tenure at your association and what needs improvement. What's the best tool to do so? Conduct an exit interview with former employees to find out what you can do to increase your retention rate.

It's Not About the Money

Don't fall into the trap of assuming, especially in light of the recent recession, that your employee's motivation for leaving is a job offer promising a higher salary. Research shows that, in many cases, money is not the main reason employees leave a company. Typically, salaries for the same job are fairly consistent within each geographic area.

If employees aren't leaving for better paying jobs, what are some of the reasons they do leave? Often, employees cite lack of career opportunities, inadequate training, inflexible work schedules, and personality conflicts with supervisors as the main reasons for leaving their jobs.

Unless an employee has been vocal about dissatisfaction with her job, the exit interview is often the first time a manager will find out that something is wrong. By interviewing employees in the days before they leave, you can learn their reasons for leaving and even why they stayed as long as they did. The exit interview can

also reveal where about-to-be ex-employees are going. If it's another community association, you can see whether there's something the other association is doing to help retention.

Another benefit of exit interviews is that they inform the association about the *types* of jobs that are subject to higher turnover and the employees who are likely to leave more quickly.

What Does the Process Involve?

The exit interview process begins with asking the right questions, and not making them too general. The more specific the questions, the more honest and useful the answers are likely to be. But you should refrain from asking leading questions, or the employee will say what he thinks you want to hear.

Cover key points. Like our Model Form: Get to the Bottom of Employee Turnover, your exit interview should cover six key topics: (1) job expectations; (2) reasons for leaving; (3) job satisfaction; (4) relationships with supervisors; (5) work environment; and (6) main reasons for turnover.

Pick appropriate interviewer. There's a drawback to exit interviews: the tendency for employees not to be candid. Some employees don't like to "burn bridges." So an employee who's leaving because he thinks his supervisors are incompetent may make up another reason when asked. He may fear getting a poor reference or meeting up with those same supervisors later in his career.

That's why the interviewer you choose should go to great lengths to assure employees that their

answers during an exit interview are strictly confidential and that the details will not be shared with anyone. That's why it's important to carefully choose the interviewer. The employee's supervisor should not conduct the interview.

One solution is to have an outside party, such as a personnel or management consultant perform exit interviews. The consultant will compile the results of the interviews and report them in a statistical form to the board or manager at the end of the year. Employees will have fewer qualms about giving an outside interviewer their real reasons for leaving. But for small communities, hiring a consultant may not be practical. In this situation, you may have to rely on your relationship with the employee to get honest answers from him.

Choose format. An exit interview doesn't necessarily have to be done face to face. Some managers have the time to conduct exit interviews in person before employees leave. This is ideal because it allows plenty of time to get candid responses. And you might have a chance to convince the person not to leave.

But not all communities have the resources to interview every departing employee before he leaves. One way to resolve this problem is by having someone from the board, or an outside interviewer, conduct the interviews over the phone. If there's not enough time for that, a hard copy of the questionnaire can be sent with the employee's last paycheck. ♦

MODEL FORM**Get to the Bottom of Employee Turnover**

The best way to find out why an employee is leaving is to ask her, using an exit interview. Armed with answers to the questions asked, you can take steps to make working for your community more attractive and, possibly,

increase community spirit. Satisfied employees will be more responsive to a community's needs and more active in doing their jobs to the best of their abilities.

QUESTIONNAIRE: EXIT INTERVIEW**GENERAL INFORMATION**

JOB TITLE: _____

LENGTH OF EMPLOYMENT: _____

COMMUNITY NAME: _____

LOCATION: _____

JOB EXPECTATIONS

- 1.** Did this job initially meet your expectations shortly after you accepted it? Yes No

- a. If so, does it still meet those expectations?
 Yes No

- b. If no, how did the job differ from your expectations?

- 2.** What were the chief benefits that convinced you to take this job?

- 3.** Are those benefits still important to you? Yes No

- a. If so, does the job still offer those benefits?
 Yes No

- b. If no, what benefits do you now look for in a job?

REASONS FOR LEAVING

- 4.** If we could do one thing to keep you from leaving, what would it be?

- 5.** Besides compensation, what factors influenced your decision to resign?

- 6.** If you are taking a new position, what advantages does the new position have over the one you are leaving?

JOB SATISFACTION

- 7.** Were you able to use your education or prior experience in your job? Yes No

If no, why not? _____

- 8.** In your opinion, was the community interested in using your education or experience? Yes No

If no, what did the community do or not do that made you think it was uninterested? _____

- 9.** Did you receive training in this job that you can use in your career? Yes No

- 10.** Did you feel that this job helped you to advance your career? Yes No

If no, why did it not do so? _____

- 11.** Did you enjoy your job? Yes No

If no, why not? _____

- 12.** Did management give you the resources and authority to do your job properly? Yes No

If no, what did you lack? _____

RELATIONSHIPS WITH SUPERVISORS

- 13.** In your opinion, were your supervisors interested in your personal and professional growth? Yes No

If no, what did your supervisors do or not do that made you think they were uninterested? _____

- 14.** Did you get along with your supervisors? Yes No

If no, can you tell us what specific problems you had?

(continued on p. 8)

QUESTIONNAIRE: EXIT INTERVIEW (continued)

15. Did your supervisors keep you informed about how well you were doing? Yes No

If no, what should they have done? _____

16. Did your supervisors treat you and your fellow employees equally? Yes No

If no, can you tell us about specific problems that you had? _____

17. Did your supervisors treat you with respect?
 Yes No

If no, how did they treat you? _____

18. Did your supervisors recognize your achievements?
 Yes No

If no, what achievements did you feel went unrecognized? _____

19. In your opinion, were your supervisors competent?
 Yes No

If no, how were they deficient? _____

WORK ENVIRONMENT

20. Were you comfortable in the physical work space?

Yes No

If no, how would you improve it? _____

21. Were you satisfied with your work schedule?
 Yes No

If no, how would you improve it? _____

22. Was the work schedule determined equitably among you and your coworkers? Yes No

If no, how would you determine it? _____

23. Were your responsibilities:
 appropriate too great too little?

24. Were responsibilities allocated equitably among your coworkers? Yes No

If no, how would you allocate them? _____

25. Did you get along with your coworkers? Yes No

ADDITIONAL COMMENTS

Live-Work Condo Challenges (continued from p. 1)

be rearranged to suit particular needs. For example, an artist may want to block off part of her unit as a gallery, keeping the living area separate.

In that vein, some developers are designing live-work condo properties to have two separate entrances for each unit—a business entrance for clients and a private entrance for residents. The developer of a Miami live-work condo property has used this design as a solution to city zoning codes, which at the time of construction made no provision for apartments with both commercial and residential uses.

Zoning and building code challenges arise largely because communities don't know whether to treat live-work condos as commercial or residential, which calls into question whether typically stricter commercial codes for things such as fire protections should be used. Having work and living space in one condo but separate, distinct sections like in the Miami development can avoid zoning and code issues. In most areas of the country there's no precedent for how to treat these units.

And buyers need to understand what uses they can and can't have, which usually are enumerated in condo association documents. Some associations have set

forth what they call "preapproved" business uses while they contemplate additional uses. Most provide a list of outright banned uses.

But as far as uses of the units are concerned, it's buyer beware, some association experts warn. Especially in developments where there are fewer live-work units than traditional residential units, buyers need to look very carefully at the governing documents to make sure that any amendments to them that would affect their rights would have to be approved by the majority of the *live-work unit* owners, and not the owners of traditional units. ♦