



Community Association Management Insider®

Helping You Run Your Condo or Homeowners Association Legally and Efficiently

JULY 2017

FEATURE

Stop car accidents before they happen in your community by using technology and setting rules to control speed and texting behind the wheel.

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Implement Four Methods to Keep Roads Safe in Your Community

Rules passed by a homeowners association are for the good of the community, and safety rules are especially geared towards protecting members. In a planned community that's laid out in a neighborhood fashion, a major risk of accidents is traffic—specifically, speeding or careless driving that's even more common thanks to some drivers feeling that it's okay to use smartphones while they're behind the wheel.

News stories of driving accidents abound, and a surprising number take place in planned communities, even though there's a perception that association-managed communities have more civility and respect for safety because of governing documents that put forth rules to accomplish that. But like a growing number of associations, you can minimize dangerous driving in your community by understanding which roads are under your control and mitigating traffic risks in the following four ways.

Associations Crack Down on Violations Nationwide

Associations across the United States have been getting particularly serious about traffic violations in recent years. Two Florida homeowners whose cases recently became newsworthy were shocked to find out that they would be fined by their association—not the police—for running stop signs in their community. They questioned whether that was even allowable. But Florida law allows associations to fine homeowners for breaking association rules, and that includes running stop signs if that infraction is mentioned in those rules. Some association managers have noted that this can be particularly helpful in communities that are gated or otherwise not easily accessible for police officers to regularly patrol.

In that Florida neighborhood, the association keeps its eye on residents who commit traffic violations, like running a stop sign, and it goes one step farther by keeping a recording. Some homeowners complained that they felt uncomfortable having strangers filming

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them and expressed concern about who was filming and how the footage was regulated. A major point of discussion was where the parameters end for just anyone who has been hired by an association to monitor traffic, as opposed to a private detective or security guard. Again, Florida law is on the side of associations, allowing video to be taken of traffic violations.

Address Speeding and Distracted Driving

Your association most likely has speed limits set for the private streets within your community. Unfortunately, many drivers lack awareness of the deadly impact that driving five or 10 miles per hour over the limit can have on the people outside their vehicles.

Distracted driving is another issue. Although texting while driving is a relatively new problem so many associations don't yet have rules pertaining to that, it's important to explore adding this to your traffic rules. Texting takes a driver's eyes off the road, and using smartphones for other purposes is just as deadly. The National Safety Council reports that cell phone use while driving leads to 1.6 million crashes each year. Nearly 330,000 injuries occur each year from accidents caused by texting while driving. In fact, one out of every four car accidents in the United States is caused by texting and driving.

There's no single cure for speeders or people who text while driving within a community. But with a carefully thought-out plan and some community outreach, speeding members or those who text may realize that the association

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is serious about preventing speeders, and eventually the incidences of speeding or distracted driving in your community will decline. Videotaping traffic infractions can be the push that drivers need to take rules seriously, especially if this is coupled with fines.

Videotape evidence can be very helpful: It prevents a “he said, she said” situation between the association and a member who has been accused of driving dangerously. If your association records footage of traffic violations, make sure that you periodically send out emails reminding members of this, and post this information in common areas, such as near a mailroom or on a clubhouse bulletin board.

Also, ask your association’s attorney if you’re required to do something specific with the money you collect from traffic violations. The money collected from the fines in the Florida association goes back into the community for things like better stop signs and speed limit signs throughout the neighborhood.

Understand Nature of Streets

Before you can delve into different methods of minimizing traffic risks, it’s important to realize the differences between private and public streets in a community. Private streets are considered part of the common area or common elements of an association. These streets are maintained by the association.

Public streets, on the other hand, are dedicated to and maintained by a city or county. The distinction between public and private streets is important because an association may not have authority to adopt and enforce rules with respect to public streets. In the event the streets running through your community are public, your association may have to overcome bureaucratic obstacles with your city or county’s department of transportation to implement some of the following methods.

Implement Four Ways to Stay Safe

You can limit objections to implementing any of the following four methods of controlling traffic issues by involving members in the decision-making process. For example, homeowner meetings may be held for the purpose of discussing residents’ views and opinions of speeders and distracted drivers in the neighborhood and to obtain recommendations from the community.

Also, a committee may be formed that will attempt to contact homeowners and discuss traffic issues. Educated homeowners are more likely to voluntarily comply with the rules and regulations of the association. Therefore, by openly discussing the traffic problems in your community, you may help to promote voluntary compliance with the speed limit.

Method #1: Install speed bumps. Traffic calming devices come in all shapes and sizes. The most recognized are speed humps and speed bumps, raised mounds of pavement placed across roadways that compel drivers to slow down.

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Installation of these speed bumps in the streets forces drivers to slow down or experience an unpleasant jolt and possibly minor car damage.

Bumps are steeper, while humps have a gradual rise. Speed tables are flat-topped speed humps. Speed humps have been shown in many studies to greatly reduce speeds and traffic accidents.

One criticism of these traffic calming devices is that they slow emergency vehicles down. But you can work around this by using rubber speed cushions. These cushions are designed as a series of small speed humps installed across the roadway. Cars must drive by with one or both wheels on the rubber products, while the wider berth of emergency vehicles allows them to straddle the cushions, thereby driving over them without slowing down.

Another potential source of liability with these traffic calming devices occurs when a driver damages his car by going too fast over speed bumps. To help reduce the probability of liability, it is important to place bumps at distances recommended by professionals. You should also place warning signs at entrances to the community and warn members in writing of the installation of the speed bumps in advance.

The association should additionally be aware that some municipalities enact ordinances prohibiting the placement of speed bumps or other similar speed control devices on private streets. Therefore, before installing any speed bumps in your community, review local ordinances to ensure there are no prohibitions against such speed control devices.

Method #2: Place stop signs and increase enforcement. Stop signs will require drivers to come to a stop at designated points in the community. Strategic placement of stop signs can prevent drivers from speeding up between signs and, in turn, reduce speeding.

Despite their benefits, stop signs have the practical problem of enforcement. Many drivers fail to come to a complete stop at the stop signs or, even worse, fail to slow down entirely. One option for the association is to contact its local city council or police department for assistance. The city may be willing to temporarily increase the number of patrol units sent to the community. Once the community has the reputation of being a high “ticket” area, drivers may be more likely to obey both the speed limits and stop signs. You can also hire a patrol company to perform parking and speed enforcement as well as provide increased safety and crime prevention patrols.

Method #3: Install radar systems. A third alternative is for an association to purchase or borrow a radar device of some type. Many police departments can lend portable trailers, which show the approaching driver’s speed. The trailers display—for all to see—a speeding driver’s violation while reminding him to obey the limit. Some units keep an electronic log of the traffic count and speeds detected.

Radar trailers work mainly by drawing drivers’ attention to their speed in the hopes of discouraging speeding. If radar trailers are too difficult to procure, you

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might consider purchasing a radar speed board. These are similar to radar trailers yet much smaller. They can be mounted to poles in your community and can be solar-powered. If a vehicle's speed is at or below the limit, it shows that speed in a steady green. If the speed exceeds the legal limit, it flashes the speed in red.

Another possibility is a radar gun, which is used to record a car's speed and then issue a fine. The use of a radar gun would require monitoring. This means someone would have to physically monitor the cars as they go through the radar and record license plate information.

Any of these systems can be used by an association to monitor speeders and issue warnings and fines to those violating the association's speed limit, if desired. A list of community vehicles and license plate numbers will need to be maintained by the association so warnings and fines may be mailed to those observed speeding. Therefore, it may be necessary for the association to amend its governing documents or adopt a resolution requiring owners within the community to provide vehicle information to the association. In the event a speeder isn't a resident of the community, the association won't be able to issue such warnings. But the mere presence of visible speed-monitoring devices in the community may be enough of a deterrent for drivers to slow down in the community.

Another benefit with the use of radar systems is the ability to record data including traffic count, average speed, number of violations, and highest speed. This is valuable information for either informing local police, getting support for more speed deterrents from the city, or helping the board make better and more informed decisions on speeding issues in the community.

Method #4: Outlaw texting while driving. Can associations take measures to address texting while driving? "Yes, on private roads—that is, the condominium roads and roads within gated communities—the board can make a rule prohibiting texting and driving," says Tampa, Fla., homeowners association attorney Ellen Hirsch de Haan. She notes that some counties and states have such laws on the books already, in which case the laws would apply to public roads within homeowner associations.

"If the roads in a homeowners association are public, we would have to look at the language in the declaration to determine the scope of the board's authority to regulate texting while driving. If the declaration has broad language about rule-making for the entire property within the community, it could make the rule," says Hirsch de Haan. However, she notes that, if the language doesn't encompass the entire subdivision, there could be some pushback against such a rule. "In that situation, the board should enlist assistance from local law enforcement for suggestions on how to regulate the texting for the public safety," she suggests. ♦

Insider Source

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IN THE NEWS

Amicus Curiae Brief Aims to Help Protect Associations' Financial Stability

Virginia-based Community Associations Institute (CAI) has endorsed a new amicus curiae brief supporting community association priority lien rights. CAI, an international authority in community association governance, management, and education, announced that Jaime Fraser Carr, Esq., and Marvin J. Nodiff, attorneys with The Community Association Lawyers in Missouri, filed the first amicus curiae brief on behalf of CAI with the Supreme Court of the United States in the case *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.* (An amicus curiae brief is one submitted to a court by a person or group who is not a party to a lawsuit, but has a strong interest in the matter, with the intent of influencing the court's decision.)

Ability to Collect Assessments in Danger

The attorneys have been leading the efforts to file amicus curiae briefs with the courts in Nevada specifically on cases related to limited lien priority for community association assessments.

The Uniform Common Interest Ownership Act (UCIOA)—along with its predecessor acts, the Uniform Condominium Act, the Model Real Estate Cooperative Act, and the Uniform Planned Community Act (collectively, the “Uniform Laws”)—facilitate an association's ability to collect common expense assessments by providing that, subject to limited exceptions, the association's lien takes priority over all encumbrances that arise after the recording of the declaration. The rationale for this approach lies in the realization that the association is an involuntary creditor that's obligated to advance services to owners in return for a promise of future payments, and the owners' default in these payments could impair the association's financial stability and its practical ability to provide the obligated services.

The priority of the association's lien is critical because if there's insufficient equity in a unit/parcel to provide a full recovery of unpaid assessments, the association must either reassess the remaining unit owners or reduce maintenance and services. The potential impact of these acts on the community and the association's status as an involuntary creditor argue in favor of providing the association lien with priority with regard to competing liens.

Case Is Crucial to Association's Maintenance Role

The attorneys argue in support of the plaintiff as well as the 21 states and the District of Columbia that give associations a statutory right to have a true priority in their lien rights.

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In a press release, CAI noted that it is extremely grateful to the attorneys leading the efforts to protect state statutory priority lien rights for community associations. CAI also stressed that priority lien is critical for the financial stability of homeowners associations and condominiums.

CAI continues to pursue efforts to protect priority lien states to enable community associations to perform their role in maintaining critical services.

Organization's Stance on Issue

CAI encourages at a minimum for states to adopt the 2014 revised version of UCIOA Section 3-116 priority lien language. Statutes that don't reflect the UCIOA language may be strengthened by increasing the period for which associations are given a lien, explicitly stating priority lien is a priority in right and not merely a priority to payment, and including in the priority lien reasonable attorney's fees and costs associated with collection. CAI is hopeful the Supreme Court will hear this case and that CAI's brief helps to protect the financial stability of the community associations in which 68 million Americans reside. ♦

RECENT COURT RULINGS**► Insufficient Meeting Notice Renders Amendment to Declaration Void**

FACTS: The board of directors of a condominium association wanted to effectively rewrite its declaration, originally drafted in 1983, because the original document was so outdated that the board felt it was necessary to start over from the beginning. After the declaration had been amended, two condominium members sued the association. The members argued that they hadn't been given proper notice of the meeting where the proposed amendment would be discussed with members. They claimed that the association couldn't amend the declaration without sufficient notice because their interests in their units would be changed by the amendment. A trial court agreed with the association that it had properly amended the declaration. The members appealed.

DECISION: A Colorado appeals court reversed the trial court's decision.

REASONING: The appeals court explained that The Colorado Common Interest Ownership Act sets forth a "uniform framework for the creation and operation of common interest communities," such as condominiums and cooperatives. Among other things, the act creates a judicial procedure for amending a declaration. Specifically, the act provides that "not less than 10 nor more than 50 days in advance of any meeting of the unit owners, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice shall state

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the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws.”

The appeals court agreed with the owners that the association failed to meet all statutory requirements necessary to amend the declaration because it didn't give sufficient notice of the association meeting at which the amendment was discussed.

Two documents that the association asserted were notice of the meeting were provided to members, the court acknowledged. But the first notice didn't include “the general nature of any proposed amendment to the declaration.” The appeals court said that stating that the board is in the process of finalizing a new declaration and indicating that information would be provided in the future doesn't provide owners with notice of the “general nature” of the proposed changes. It merely notifies them that changes will be proposed. The second notice also failed to satisfy the act because it wasn't provided at least 10 days before the meeting at which the proposed amendment was to be discussed. ♦

- Tyra Summit Condominiums II Association, Inc. v. Clancy, May 2017

DEALING WITH MEMBERS

How to Conduct an Association Membership Survey

Especially in major cities and the surrounding areas, “luxury” buildings seem to be going up left and right. As these properties are developed, you might have to get competitive to keep members from selling their home or condo unit in your community, and to entice new members to buy there instead of a new place. Upgrading dated aspects of the community can go a long way in retaining residents and attracting new ones.

Your board might want to consider allocating some of the association's resources to improving existing amenities or creating new ones in the upcoming year. For example, it could convert an unused courtyard into a community garden or create a gym, playroom, or lounge area for members to enjoy. But it's important to make informed decisions when it comes to what members want for amenities and perks. One way to accomplish this is to conduct a survey of the membership so homeowners have a voice in their own community. After all, a major motivation for upgrades is to make them stay.

Additionally, surveys can make members feel that something is being done about an issue they are passionate about, or surveys can prompt them to think about possible changes the board will soon propose. Here's what you need to know to develop good questions, encourage participation, and conduct the survey.

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Survey Isn't Only Useful Tool

Ideally, boards should vet the issues involved and then make a decision that is in the best interests of the membership. Typically, board members are much more aware of the factors and implications of a decision than the average member, and so are better informed and able to make a clearer decision. Boards can obtain budget estimates for alternative projects, consult experts such as architects or designers to prepare alternative concept drawings for unused spaces in the community, and get feedback from area real estate experts as to how much a certain amenity would enhance the value of the community and affect the salability of members' homes.

Once the decision-making factors are defined, then there's value in having the members weigh in on the priorities. But getting member feedback doesn't always have to be accomplished in the form of a survey. Member input can be obtained through a special meeting of the membership. In fact, if a board has a distinct preference between two alternatives, it may be better not to do a survey. At a meeting, membership input can still be obtained and the board's preferred option can be thoroughly discussed. If necessary, professionals can be brought in to explain the benefits. Even if the majority of members who attend a meeting doesn't support the board's preference, at least the opposition isn't as formalized as it is with a survey—and the board can still get the benefit of the members' concerns and alter the proposal to address those concerns.

Design Survey for Your Purposes

If the board has done the requisite research and doesn't have a clear preference between or among alternatives, it's time to start crafting appropriate questions for a survey. Here are some guidelines to consider when drafting your survey:

Target key people. It may seem obvious that the population you are surveying is made up of the members of the association. Actually, however, it depends on what questions you're asking. If you want feedback on the level of some type of service, such as window washing at a condominium building, then you would want to ask the members of the relevant group. But if you want to know about the experience of living in the community, then you want to get the impressions of everyone living there, renters and members alike.

Knowing the target population and their motivations will not only assist you in gathering meaningful answers, but also help you interpret the results. For example, let's say your community has 80 percent nonresident membership. The 20 percent want another pool; the other 80 percent don't want to participate in funding it. That's an important difference to understand. Also, if you manage a large community, consider surveying representative samples in order to cut costs. A representative sample panel could be demographically equivalent to the overall membership base, and consist of about 400 people with online access. You can do many more surveys this way because it's fast, far less expensive, and relatively statistically accurate.

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Focus questions on what the board is really considering. One problem that some boards don't consider is whether a particular response has any value. For instance, if the association must undertake certain repairs or replacements, it doesn't make sense for the board to be asking members whether the work should be done. Instead, it might be more appropriate to ask when would be a more convenient time to do the work, or what funding mechanism would be preferred.

If, for some reason, the board cannot go with what the owners indicated was their preference, the board should be ready to explain its decision in a proactive way. For instance, if you request input on the color scheme and you have to drop the first choice because the expert has recommended against it, you should explain that to the owners before you implement the decision. Ideally, you would know the expert's objection before you ask the question on the survey, so that color isn't listed as an option.

Avoid generic questions. Asking generic "Are you happy with the landscaping?" type questions inevitably results in expected responses, such as "We love the landscaping!" If your board asks, "Do we need another pool?" many survey respondents could answer, "Yes!" But when you get more specific—for example, by asking "If you had \$100 to spend on an amenity, which of these five amenities would you spend it on?"—the pool suddenly might not be the big deal it appeared to be.

Encouraging Participation, Interpreting Results

You should be mindful of your survey participation rate to be able to trust the results. If only a few people respond, there's a tendency to rely on those responding, particularly if one group has very strong feelings. For example, if 30 percent of the members responded, that might mean that very few people have strong feelings about the issue, rather than the indication from the bulk of the 30 percent responding.

To encourage participation, preface the survey with a letter explaining to members the purpose and importance of the survey, encouraging them to respond, and reminding them of the deadline for responding. You can adapt and use our *Model Letter: Emphasize Survey's Value to Community*. An easy way to increase responses is to award prizes to members based on random drawings of returned surveys. Prizes can be anything from HDTVs to rebates on assessments.

Another way to increase participation is to make the surveys as convenient as possible for the members to fill out. Provide a combination of paper and online surveys to appeal to tech-savvy and traditional members. And it's easy to send reminders through email.

PRACTICAL POINTER: If you aren't confident coming up with unbiased questions and interpreting the results, consider hiring a survey consultant from a market research company. Your board can work with the consultant to develop the questions, use a self-survey program to input the questions, and then take the results

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back to the consultant for analysis. There's a big difference between how volunteers will phrase questions and how professionals will. The pros know the right way to ask a question to get a meaningful, measurable response.

Communicating the Results

Clear communication at all stages of a survey is essential to minimize any backlash from the members. You should consider holding an information meeting after the survey is completed and the results are processed. Doing this avoids speculation that the board is acting contrary to the wishes of the members.

The board, however, isn't obligated to provide such information. Informational meetings offer members who disagree with the board's goals or a particular proposal a way to voice their concerns. Ultimately, it should be communicated that the board has the power to make decisions on behalf of the association. Of

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MODEL LETTER

Emphasize Survey's Value to Community

Adapt the following letter to send to the members of your community you wish to survey. The letter conveys the importance of the member's participation and explains how the members will be able to access the survey's findings.

Dear Member:

This is the 2017 Shady Acres Community Association Member Survey that was discussed in the May newsletter and on the association website. Your participation is very important, and your answers will be used by the Board of Directors to help improve the services and amenities offered by the association. The only way an organization such as ours can accurately learn how to better serve its members is by obtaining feedback from a large representative sample, so we hope that you will take a few minutes to complete the questionnaire—either on paper or on the Internet. Instructions will follow. [Optional: In order to ensure independent analysis as well as member confidentiality, we have contracted with a market research company to receive completed surveys and to tabulate and analyze the results. The board will see only grouped results.]

Your Board of Directors will use these survey results to help make decisions about [insert topic] over the coming year. When it is available, you will also be able to read a summary report of the survey findings on our website. If it is at all possible for you to do so, we would appreciate your completing the survey by [insert deadline date]. Your timely completion will enable our survey firm to compile the results and quickly put this valuable information in the hands of the board for decision-making and planning. If you have any questions about why we are conducting the survey or how the results will be used, please contact me at [insert office tel. # and/or email address].

Thank you very much for your thoughtful help. Remember, your opinion counts!

Yours truly,
Jane Manager

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course, if the board wishes to specially assess the membership, then the membership is usually given the opportunity to vote on that issue. But where the bylaws don't give the members a right to vote on something, they don't have a right to decide the issue in place of the board.

If members truly object to the board's proposed actions, their remedy is to elect new board members who will more closely represent the members' wishes, at either a special meeting or at the next annual meeting. This remedy can be mentioned if there is much protest when the board announces its decision on what action to take.

Information gleaned from surveys is only one aspect of the decision-making process. Surveys are advisory to the board, and association boards should expect some resistance to any idea that's implemented. Being able to clearly communicate the survey results and the reasoning behind the ultimate decision will go a long way toward minimizing dissent in the community. ♦