



# Community Association Management Insider®

Helping You Run Your Condo or Homeowners Association Legally and Efficiently

DECEMBER 2017

## FEATURE

*Here are disaster preparedness tips that can help associations plan for and navigate three common types of emergencies.*

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## Prepare Disaster Plan for 3 Events That Could Hit Community Hard

The day-to-day management of a planned community or condominium building can be a heavy workload, filled with tasks that are crucial for keeping the association running smoothly. When you're busy with the daily duties, however, planning for an event that has only the potential to occur is easy to put on the back burner. The past year has shown that major disasters—whether they involve epic weather, acts of terror, or violent crimes on a mass scale—can and do befall communities across the country.

Turning a blind eye to the reality that disasters of various kinds can occur at any time sets up a worst-case scenario: Not only does a disaster happen, but managers, boards, staff, and community members aren't equipped to handle it. And that makes it even harder to recover from. Here's how you can come up with a disaster preparedness plan that could save the day for your association in three situations.

### Situation #1: Natural Disasters Require Basic Needs

As the association manager, you're probably the "go-to" point person for issues in your community. That's practical for routine concerns, but can lead to trouble when the stakes are high. "The board's assumption that the manager will be there to immediately help out after a natural disaster hits is dangerous and unrealistic," says Seattle community association management expert Paul D. Grucza. "Whether it's a natural disaster, such as an earthquake, flood, tornado, or wildfire, or a more common disaster like an electrical outage, 90 percent or more of the time, the residents in the affected community or building are on their own. That's because the manager and her staff are going through the exact same situation and might be unable to provide any assistance at all," he warns. For example, after an earthquake staff might not be able to leave their own homes, let alone drive to the community where they work.

So what can associations do to grapple with this? Grucza is a proponent of educating managers and boards on all aspects of association living, but he specifically trains management, boards, and

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homeowners using a disaster preparedness program that emphasizes the fact that individuals are likely to be on their own when a natural emergency arises.

In addition to stressing self-reliance in the face of an emergency, he also prepares and equips associations to deal with disaster by reviewing the key items they should focus on ahead of time. Grucza explains what should go into an emergency disaster plan; part of his training is talking about the tools that the association can roll out:

**1. Tools for reassembly.** Put together a plan for how to reassemble the community at least in the short term so it's livable. Whether it's a power outage or weather that takes out cell phone towers, you need a way to hear what authorities are advising citizens to do to move forward safely. Invest in crank-up radios for condominium buildings and communities and let residents know that they'll be used in common areas where everyone can gather. Encourage residents to also invest in this type of item for their individual homes or units. Portable illumination is another crucial tool. Power and, therefore, lighting is likely to go out during extreme weather. But it's critical to be able to see during emergencies. Price out lighting sources ahead of time and learn how to use them.

**2. Basic living supplies.** Another crucial element of a disaster preparedness plan is a supply of basic items that people will need to live. Opinions might differ on what's necessary, but Grucza says, "Supplies should obviously include a stockpile of clean water in the building and dry foods. Keep in mind when creating a bank of food that you won't be able to rely on refrigeration or a heat source for cooking. Items must be ready to eat without appliances. The goal is to create a microcosm of the larger community where residents can go to get

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through the period of time they're affected. Remember also that elevators in high-rise communities probably won't work, so make sure that the stockpile is accessible by stairs.

**3. Calculations for stockpile.** Grucza notes that in addition to pinpointing the general things one needs to get through the first few days or weeks of a disaster, getting enough of them is important. "Doing the calculations for supplies is critical," he says. According to FEMA, if there's an earthquake, hurricane, or tornado, whether in a planned community or high rise, residents shouldn't expect help for two weeks. And repairing the surrounding community's infrastructure takes weeks more when those disasters are involved. Look into the estimated time frames for help to arrive after each of the natural disasters your area is prone to and plan the amount of supplies you need according to that.

### Situation #2: Evaluate Security to Prepare for Terrorism

Terrorism, whether here in the U.S. or abroad, seems to be part of the news cycle. It can seem overwhelming, but you should face it head on without panicking. "Many public officials advise that citizens shouldn't become a prisoner of terrorism; rather, they should lead their lives knowing that something could happen and be prepared for it," Grucza notes. "But that's the same philosophy for any type of disaster, and the good news for associations is that those preparations that you've made for a natural disaster will serve you well during a terrorism event," he notes. "There's not much of a difference between a terrorism event and a natural disaster event in terms of mindfulness, awareness, and preparation—three things that serve managers well in association management anyway," he adds.

Financially, an association can take precautions against terrorism, as well. Associations can opt for terrorism insurance coverage that will extend property and liability coverage after damage from an act of terrorism.

In terms of preparation for a terrorist attack specifically, look for flaws in your security system. Think about common terroristic violence and what forms it takes. For instance, explosives are often used. Evaluate areas of the community where visibility is an issue and ask whether, if a suspicious package is left there, will it be found right away? What about parking? Does your association have a way of keeping track of strange cars or other vehicles that seem out of place?

"Some association boards and managers may believe they live in an area that couldn't feel the impact of a terroristic event, but there really is no place that's safe," Grucza cautions. Terrorist attacks can come in different forms: cyberattacks, explosives, intentional car accidents. "The geographic footprint would be different for each type, but the training, education, and preparation an association should undertake are generally the same.

### Situation #3: Make Communication Key for Violent Crime Incident

Sadly, violent crime, most notably mass shootings, seem to be regular occurrences in the United States. There are some key differences between weather and terror emergency planning and being prepared for violent crime.

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While communication is of the utmost importance in any emergency, finding a way to give specific instructions to members is the essential priority here. “We need to figure out how to get to our membership to tell them not to go out, to go out in groups or two or three, or whatever the case might be in a certain scenario,” says Grucza.

In some cases, such as in Tampa, Fla., recently, a criminal like a serial killer could be at large, with members at risk on a continual basis until the criminal is caught. But in other cases, the criminal, like the shooter in the recent Las Vegas massacre, could immediately impact a whole building or area. Getting to people in either case will involve different modes of communication.

“At the top of the disaster preparedness checklist should be a solid, complete communication system to effectively provide messaging to the affected community members,” says Grucza. Texting, reverse 911 calls, and email blasts are great methods, but it’s essential to choose the method that will be most effective in a given emergency, he says.

### **Ushering in an Era of Preparedness**

Although a shocking number of associations don’t have an adequate—or any—disaster plan, the number is slowly declining. Consultants like Grucza bring the need for preparedness to their attention, and some insurance companies are prompting associations to get moving on a plan.

Additionally, newer sets of governing documents (whether for spread-out communities or high rises in markets with volatile weather or natural disasters, like California) make it the obligation of the association to develop and maintain an emergency plan that fits expectations and requirements for where that community sits. For example, a Los Angeles community must have a plan for earthquake preparedness. A Seattle community is required to have plan on file with the city for weather disasters. A Dallas community must be prepared to deal with tornados.

“Because these disasters are occurring with such frequency and severity, insurers want to make sure their insureds are doing what they can to mitigate the losses insurers will have to cover,” Grucza explains.

You should communicate the importance of taking step-by-step precautions, but without fear mongering. Present the topic in the context of how the members will be able to help themselves, because when that time comes, they’ll be on their own. Give them proper training in how to act during and after an event and how to put aside caches of supplies ahead of time.

### **Preparedness Can Be Cost Effective**

Typically, money for disaster preparedness consultants or supplies will come from the general funds that come from assessments members pay. A line item for emergency supplies and consultants would be embedded expenses with a threshold amount that has been agreed upon through a vote. It should become a routine expense.

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But what if your association doesn't have a budget for a formal expert to evaluate preparedness needs, or to purchase extensive supplies? "There are so many free resources that associations and their managers can avail themselves of," Grucza says. FEMA and the Red Cross have lots of literature and tips. Major cities also should have pamphlets on disaster preparedness tailored to that geographic area.

Talk to those organizations about getting supplies on a budget or for free. Include their pamphlets in welcome packets for new owners. Providing disaster preparedness guides should be a part of the services you provide for a community.

Simple things like providing signs to members in a condominium building that they can put in their windows to indicate that they need help are practically free—a manager can print these or spend a small amount at a professional print shop. "They are simple but invaluable when they help let responders know where to go," says Grucza. And printing and distributing a checklist that members can keep handy near their doors that reminds them where they stored their sign, the rules for using it, and other resources is helpful and can also be done in a management office that has a printer and paper.

"Even a nominal amount of money added to a budget line item for potable water is worth it," Grucza stresses. He says that the costly part of disaster planning is the time it takes to develop. Once that's done, it's just a matter of improving the plan over time. And take every chance you get to reinforce the plan with the membership—such as at the annual meeting or a time when the community is gathered together. Managers need to continually get the message across that it pays to be prepared.

To prepare for violent crime, look into getting resources from the local and state police departments, the county sheriff's office, and the FBI—all of which have counter-violence crime units and education units that provide free informational literature. "The authorities can provide wonderful training tools for free, so managers can allocate dollars to other disaster preparedness items," says Grucza.

Grucza advises that a manager should focus on education, raising awareness, thought provocation, and discussing the realities of what the membership needs to do to protect itself. "At the end of the day, after you've given them disaster preparedness tips and tools, it's their choice as to whether they'll use them," he says.

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**PRACTICAL POINTER:** When handing out literature during association business, make clear that this information isn't an endorsement of any organization. To avoid liability, when you talk about the information available, note that you're using it to raise awareness, but don't tell them they are required to do disaster planning if they aren't. It's crucial in many association management situations to "suggest" but not "command," says Grucza. ♦

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### Insider Source

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## RECENT COURT RULINGS

### ► Failure to Read Covenant Not an Excuse for Shirking Assessments

**FACTS:** A homeowners association alleged that a homeowner breached the covenant to pay assessments for common area maintenance and other services necessary to operate the community. He had unpaid dues totaling over \$15,000. The homeowner contested the reasonableness of the charges. The association asked a trial court for a judgment in its favor without a trial.

**DECISION:** A Pennsylvania trial court ruled in favor of the association.

**REASONING:** The trial court explained that to rule in favor of the association without a trial, there couldn't be any questions as to material facts in the case that a jury would need to weigh. Here, the facts were clear. The covenants for the community required all homeowners to pay for services the association provided to keep the community operating. Those services included maintenance of the common areas. Under the Uniform Planned Community Act (U.P.C.A.), a unit owner's association may adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners, explained the trial court. Further, a unit owners' association may impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association.

The homeowner argued that the assessments weren't reasonable and asserted that in some Pennsylvania community associations, there is an express agreement prohibiting assessments. But the trial court pointed out that in many of those associations, there is a covenant to pay dues to an association instead, which covers the same services an assessment would.

The trial court determined that the homeowner's covenant attached to his deed clearly expresses that there is to be an association of property owners and that the owner of the premises will be subject to dues and assessments in compliance with the bylaws of the association. The bylaws state that the association's board of directors shall "establish and enforce rules and rates for community service and establish any special assessment, the annual common expense assessments, fines and other charges."

The homeowner also claimed that he was unaware of the rules, dues, and requirements at the time he purchased the home and that his realtor never explained things to him. The trial court pointed out that, first, that is not a legal defense. The trial court also noted that the homeowner didn't mention hiring a lawyer at time of his purchase despite the large investment he was making. Finally, the U.P.C.A. requires that a re-sale certificate be given at least 10 days prior to closing to a buyer in all planned developments, including this one. The re-sale certificate lists the yearly dues, and contains the bylaws and current rules and regulations. A buyer can then cancel a transaction after receipt and review

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## Recent Court Rulings

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of the re-sale certificate if done within a certain period of time. The homeowner should have reviewed those documents at that time before proceeding to closing, the trial court said. ♦

- Pocono Farms Country Club Assn. v. Lewandowski, September 2017

## DEALING WITH BOARDS

### Help New Board Member Transition into Role

When a board member gives up her position, your association will have the sometimes difficult task of replacing the outgoing member. But the challenging part of replacing a member comes after the new member is found and elected to the board. That's because, depending upon the new member's experience with your association, or associations generally, there may be a lot of information for him to quickly get up to speed on—especially if big decisions are in the process of being made.

You can deal with a steep learning curve effectively, though. The more a new board member knows, the more she'll be able to contribute to the association in a meaningful way. Help your board's new member successfully transition into her role three ways.

#### Focus on Priorities

When a new member is elected to the board of directors, help her to distinguish items that are a high priority from those that are not, and advise her to tackle the time-sensitive issues first.

One way to do this is to encourage new directors to review and ask questions about the most immediate or recent actions the board has taken, and those that are coming up next.

Consider using a “modified policy governance” model, so the board acts strategically, but the association's staff members use a tactical approach. The strategic plan is an important instrument, with its goals and timelines, to become familiar with, as are financials, including upcoming major asset projects.

Tactical information doesn't require the same sense of urgency. While the covenants are the primary governing documents, they are less time sensitive because they provide a roadmap to how the organization functions, and are complex and generally take longer to absorb.

#### Compile Information in One Place

Think about designing an operations manual. You can do so by compiling important information that the new member can use initially to familiarize herself with need-to-know information—and then refer to in the future.

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## Dealing with Boards

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There are several benefits to having an operations manual at the new board member's—and your and the entire board's—fingertips.

Having an operations manual may make board meetings run more smoothly. By including meeting minutes for the prior 12 months in each manual, the new board member can quickly review what has been discussed in past meetings before he arrives at new meetings. And an operations manual can shorten emergency response time. The new member will be aware of how he should act during coordinated efforts by you and the other board members to fix a problem.

There are so many materials that govern an association, from statutes to covenants to resolutions, so it's helpful to assemble the most relevant information in an organized format for easy reference by the directors and so that they aren't overwhelmed and fail to absorb the crucial parts.

Your operations manual should include the governing documents in a hierarchy. (For example, laws that your association is subject to.) Your association's articles of incorporation, covenants and bylaws, general covenants, policy resolutions, and rules and regulations should be included in that order in the operations manual.

But information that's updated frequently, such as financials that are updated monthly, shouldn't be in this material because that information constantly changes. However, an overview of the type of accounts and any guidelines—for example, a “Financial Controls Policy”—should be included in the manual.

Don't forget to provide organizational charts, helpful contact information, the association's annual calendar of recurring events, such as the annual meeting or audit, and board meeting and strategic planning meeting schedules.

Consider posting the information in the operations manual online so that it's accessible at all times for both new and incumbent board members. That would be a place to provide materials that change frequently, such as financials and newsletters.

This is also a great opportunity to have all board members review this important information, which they may have forgotten or been unaware of. And it provides a chance for the association to make sure that all of the information still complies with the law, which may have changed since that information was first used.

Each board member should receive a copy of the operations manual. And remember that the chairperson of the board should have input because he may have certain areas he wants to focus on for the year.

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**PRACTICAL POINTER:** Use staff to assemble the first operations manual and to update it when necessary. Having one point person from your staff take care of the operations manual can provide continuity while directors rotate.

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## Hold Orientation, Transition Meetings

In addition to providing the new board member with your operations manual, think about holding orientation sessions when new members are elected.

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Providing two sessions can avoid the feeling that the new board member is in over her head. The first session could provide an overview of the association's history, as well as the governing documents. The second session could focus greatly on the strategic plan.

You can create a policy obligating new board members to attend any orientation sessions that are held. The policy may also require that the first official meeting of the new board be a "transition" meeting between the old and new boards, where outgoing board members can share pertinent information. For an example of a well-worded policy that you can adapt for use at your community, see our *Model Policy: Require Information Sharing Between Old and New Board Members*. ♦

### MODEL POLICY

## Require Information Sharing Between Old and New Board Members

Board members are only as good as the information they're given, so it's important to set a policy that facilitates information sharing between old and new members. Your policy should require the first official meeting of the new board to be a "transition" meeting between the old and new board members. It should require outgoing board members to attend and turn over information to incoming board members. Don't forget to require board members to sign the policy to signify their agreement with it. Show this policy to the association's attorney before adapting it for your community.

### BOARD MEMBER TRANSITION POLICY

**PURPOSE:** It is the intent of this policy, established by the Board of Directors of [insert community association's name] to allow for a smooth transition of new responsibilities from outgoing Board members to incoming Board members. The Board has established this policy to include the following, to which each Board member agrees to adhere, as evidenced by his/her signature hereto.

1. Whenever the composition of the Board of [insert community association's name] changes, a transition meeting between outgoing Board members and incoming Board members shall be held during the first official meeting of the new Board.
2. Board members who are not re-elected to the Board, or who voluntarily retire from the Board, shall attend the transition meeting to share information and insights with incoming Board members.
3. At the Transition Meeting, outgoing Board members shall provide incoming Board members with all Board information gathered during the former's tenure.
4. All new Board members shall be obligated to attend a Board member orientation session to bring them current with Board policies.
5. The Board acknowledges the contributions of each Board member and has created this policy in order to help run the association in a cooperative spirit of sharing and openness. To that end, each Board member agrees to abide by this policy as evidenced by his/her signature below:

PRINT NAME: \_\_\_\_\_

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_