

Community Next: 2020 and Beyond

The Association Governance Model

Panel Report

Introduction

The community association governance model of today is a product of governing documents and state statutes. Future association governance is unlikely to change significantly until and unless state laws allow greater flexibility in drafting association governing documents that address current issues and that reflect actual conditions and realities.

This panel readily foresaw many changes, the harbingers of which are apparent today, based on our experience and knowledge of common-interest communities (CICs) and on past evolutions. Accordingly, this group has tried to predict what might occur and suggest ways in which such future events might be ameliorated, restructured or enhanced for a better future.

The panel members believe that recent changes to some state laws may signal a growing awareness by legislators of the unique needs of associations. The changes, though modest, signal a trend that should be encouraged by CAI and its legislative action committees (LACs). For example, a few legislators recognize that governing documents often require impossibly high percentages of owner approval before they can be changed. Some states have provided limited relief in their statutes. Texas and Colorado, for example, provide provisions in their statutes stating that, if governing documents require more than 67 percent owner approval to amend, then the association can default to a super majority for approval. The Davis-Stirling Act in California provides a process for associations to petition the court for relief when a declaration requires a super majority vote to adopt an amendment.

Additionally, savvy community association attorneys are introducing changes in amended documents that make them more flexible. For example, provisions are being added that allow the documents to conform to state law if that law specifies a higher or lower percentage for late fees, votes, etc. Other provisions are either filling in the gaps where the statutes are silent or ambiguous and where interpretation can be guided by the governing documents.

As a result of local government regulation, CICs are becoming an even larger percentage of the U.S. housing market. As this trend increases, legislators and the courts will have no choice but to make reforms to current statutes to facilitate both growth in the industry and to reflect the governance realities facing associations. However, the panel felt strongly that these needed changes could be brought about earlier through a concentrated effort by the community association industry, i.e., homeowners, managers, professionals, CAI and its concerned affiliates—AARP, NAHB, NAR and

other organizations. The issues that emerged and were explored by this panel coalesced into several broad conclusions, which are discussed in this report.

- One size does not fit all.
- All volunteers are not created equal.
- CAI must strengthen alliances with developers.
- All stakeholders, including legislators, need to recognize the need for associations to conduct reserve studies and to fund reserves based on those studies.
- Future resident demographics will change everything.
- Technology must become a priority.
- State legislatures unwittingly perpetuate problems.

One Size Does Not Fit All.

The community association governance model of today does not fit all associations. By extension, it will not fit the associations of the future without changes in state statutes, local municipality requirements and in association governing documents.

Association size is a distinction seldom considered by legislators, developers and even community association professionals. It is no surprise, therefore, that local municipalities require developers to create associations for even the smallest projects. These associations are then saddled with governing documents and become subject to irrelevant codes that create obstacles to their operations.

In small associations, two of the biggest problems are the burdens placed on board members and the issue of underfunded reserves. Although many associations lack financial and volunteer resources, these challenges are magnified in small associations.

Associations, lawmakers, developers and managers of the future will need to find ways to ease the burdens of the association model for very small associations. Ideally, small associations would be exempt from irrelevant or inappropriate state statutes. And developers of these small associations would be relieved of the requirement even to establish an association unless a minimum number of homes are built, with restrictive covenants and deed restrictions being among the alternatives that provide homeowners in these projects with some measure of protection regarding matters such as architectural control.

Some states have already done this. For example, in Texas, associations with fewer than 15 units are exempt from some, but not all, statutes. And Colorado exempts associations with fewer than 10 and 20 units. These more flexible requirements seem to be working well, and this success should be communicated to other state legislatures. Ideally, local municipalities would support the development of new, small communities, and small developments could be free to establish voluntary associations if they wish.

Statutory exemptions, however, neither eliminate the need for governing documents, nor do they adequately address the full issue or change the small association's model. That model might offer different, unique or "scaled" documents, reserve requirements, or number of board members.

Success might be found in relaxed governance models for future small associations. For example, alternative models might resemble a social club. This type of approach would likely be successful with millennials.

On the other end of the spectrum, large-scale associations of the future have already given rise to a new type of service provider—the professional amenity manager. Amenity management, i.e., pools, golf courses, tennis courts, athletic facilities, clubhouses, restaurants, retail areas, etc., is becoming a significant aspect of many community managers' job descriptions. However, it does require a different skill set and knowledge than traditional community management. Large-scale associations of the future will likely contract with managers or management companies having qualified experience in amenity management or sell their amenities to third parties who would pay a percentage of earnings to the association.

All Volunteers Are Not Created Equal.

In 10 to 15 years, most boards will include millennials. As a group, Millennials are civic minded and want to have an influence in shaping their organization and its future. However, under the current association model their influence would be limited. Millennials distrust institutions, and associations are institutions. Accordingly, the environment must be less governmental and more flexible and social if we are to gain their participation in the association.

BOARD COMPETENCE

All associations need well-qualified volunteers to serve on their boards. This will remain true in the future. Savvy future developers might wish to improve association operations after they turn over control to the owners by establishing minimum board member qualifications or requirements in the governing documents. Similarly, existing associations should be encouraged to amend their governing documents to set minimum requirements for board service. These requirements might include education level, professional experience, prior leadership positions and attendance at accredited board education programs—something that demonstrates candidates are capable of running a corporation.

As some already do, governing documents of the future may contain provisions for the automatic removal of a board member who does not attend board meetings, who is not prepared for meetings, who becomes delinquent with assessments (all board members must set a good example) or who is otherwise unfit to serve.

In the absence of qualified volunteers, communities in the future will likely explore creative alternatives to seating competent board members.

Association operations have already become very complex; future operations will be even more so. At some point, board expertise and qualifications will have to be more carefully controlled. As this may stifle some amount of volunteerism, associations may turn to professional board members. These individuals won't necessarily live in the community. Like portfolio managers, they might work for several associations simultaneously. Other communities may outsource governance duties to professionals who will interface between homeowners and the manager.

Communities may also turn to a corporate model in which the association president is the CEO. This position would be paid, and this person would make the big decisions. This CEO position might be filled by a manager, by a community resident or by a corporate executive. The balance of the board would include volunteers who would function under the CEO/president's guidance. In this model, the CEO would work closely and directly with a professional manager.

Some associations in the future might pay a modest stipend to board members, similar to what city council members receive. However, although such stipends would create an incentive for residents to volunteer, they would not ensure competence. Competence will only be achieved by requiring board members to attend accredited board education programs. Payment for attendance at such courses is

a legitimate association expense and a very small price to pay for increased board member competence.

Eventually, state or local government statutes and ordinances may also require formal board education. Montgomery County, Maryland, recently made board member education mandatory. Unfortunately, provisions for enforcement are weak. Texas has a bill pending that will require board members to sign an affidavit stating they've read and understand all relevant statutes and governing documents. Both of these states are taking steps in the right direction, but they need to go farther. While mandatory requirements may reduce the number of people who volunteer, they will also eliminate at least some unsuitable candidates.

THE BOARD AS POLICE

Board members are required to enforce rules. Unfortunately, most are unprepared and unqualified to fulfill this important function. Even when public laws are broken (nuisance, malfeasance), local municipalities frequently claim, "It's a private matter, take it up with your board." So it falls to boards to police residents' behavior. Many people who are new to association living, and especially those who have different cultural paradigms, have difficulty comprehending the idea of neighbor "police" enforcing rules they don't know about or that they don't understand.

Board member performance both now and in the future will be enhanced by training in mediation, dispute resolution and in talking to people informally to work out problems. Alternatively, they may hire professional mediators or others who resolve disputes to help enforce rules.

Or, as an alternative, some future communities may establish more formal "law enforcement" style divisions for the association or may outsource rules enforcement to professionals.

Other associations may update their governing documents to include a standing community relations committee that would enforce the rules and satisfy provisions requiring alternative dispute resolution before taking legal action.

Future associations may also turn to local government entities or to private sector resources more frequently for fee-based alternative dispute resolution before embarking on rules enforcement proceedings, and they may make use of government liaison programs or ombudsmen to field questions from homeowners.

CAI Must Strengthen Alliances With Developers.

The community association governance model of today is a product of state and local statutes, ordinances and planning board requirements and by the developers who are required by those statutes and government entities to create associations in the first place. Therefore, the success of these associations rests squarely on the quality of the documents that these developers file. Unfortunately, however, many developers and their attorneys don't focus on the operational and governance needs of the association after the developer departs. In fact, they are likely to be unaware of the problems that arise later from cookie-cutter or antiquated documents that do not address the unique needs of a particular association.

Some developers and government entities are ignorant of the impact governing documents have on future homeowners and are, therefore, likely to be indifferent to their contents—other than to ensure protection of their interests. They just want to get the paperwork finished and move on. Many are small, independent entrepreneurs who re-use old documents to keep development overhead costs down. Consequently, developers continue to file outdated and inappropriate governing documents for their new associations.

Raising the consciousness level of developers will require effort and time. Unless and until filing and approving governing documents becomes as detailed and specific as site plan approval is now, making sure governing documents are relevant and appropriate will be an ongoing education project. Developers need to understand that drafting appropriate documents in the beginning is far better than amending inappropriate documents. They need to understand that the processes and criteria required to amend existing governing documents are prohibitive. They need to understand that creating governing documents that are appropriate for the association being developed can lessen tensions during and after turnover of control to the association members. Perhaps most important, they need to appreciate the unique opportunity they have, not just to improve the governing documents, but also to improve the quality of life in their developments for years to come.

Of course, accomplishing these imperatives is a very different matter. It has been difficult connecting with developers and their attorneys early in the process. Ideally, CAI should work with both developers and their attorneys to improve governing documents before they're filed. Exactly how that might happen requires further discussion and outreach, but certainly liaison with NAHB, the ABA and other organizations is an obvious first step.

Part of that discussion centers on engaging developers much earlier in the process, i.e., before turnover. It requires establishing values and principles (the *culture*) in the documents—enlightened documents—before development begins. Celebration, Florida, is a good example of the benefit of establishing the values first, which then became the foundation for the documents, architecture and programs.

In the interim, however, CAI, through the College of Community Association Lawyers (CCAL) and with financial support from CAI's President's Club, might consider developing model governing documents with updated and flexible provisions. These should be made available to developers' attorneys along with an explanation of why these provisions should replace those that might currently be contained within their "standard" documents. The same might be done with entire sets of documents with adaptations for each state. At the very least, developers and their communities would benefit from a checklist of appropriate ways to draft these enlightened governing documents. Moreover, CCAL, in conjunction with the American Bar Association (ABA), might develop variable checklists covering the many possible exigencies in various types of communities.

Another model that might be considered would be "flexible" documents. For example, documents could be written so that only some provisions are fixed and as many sections as possible are flexible. This would provide protections for developers through transition, while leaving remaining sections customizable by the owners after transition. It might also allow for or require periodic, affirmative document review to update the flexible sections. Again, details would require further discussion.

Other ways to help developers get off to a solid start with the best possible documents might also include getting the manager involved with the developer from the beginning. In this manner, the developer can focus on building, and the manager can focus on the association, including reviewing draft construction and landscape plans and other documents, and creating the initial budget that establishes a reasonable assessment including reserves.

UNDERSTANDING CIC LAW

Compounding the problem discussed above is the misperception among developers and others that real estate attorneys are the appropriate professionals to draft and file documents establishing CICs. While many real estate attorneys excel at CIC law, they are the exception, not the rule. Too many understand too little of a community association's unique nature.

Developers must be educated about the value of retaining attorneys who specialize in CIC law. Likewise, real estate attorneys need to understand the value of collaborating with CIC attorneys or of gaining a deeper understanding of CIC law themselves.

CCAL fellows working with the ABA to achieve recognition for CIC law is an excellent step toward this end. This panel would like to see requirements that only attorneys qualified in CIC law are allowed to draft documents for new communities. Furthermore, developers and prospective attorneys would be required to sign an affidavit attesting to the attorney's knowledge of CICs and CIC law.

All stakeholders need to recognize the need for associations to conduct reserve studies and fund reserves based on those studies.

The panel members were not opposed to the advent of state laws that mandate periodic reserve studies by professionals (such as those with the Reserve Specialist [RS] designation from CAI) and require associations to fund reserves in accordance with the study. Such laws could be even more important 10 to 15 years from now when more Millennials are involved in association governance, as they might otherwise opt for short-term solutions such as special assessments.

Foreclosure is an unfortunate product of the times in which we live. When the economy is good, fewer association members are delinquent. Therefore, foreclosure rates are down and there is less attention from the press and from the various legislatures. When money is tight, however, community associations are more often required to foreclose to protect the association's finances. The result is negative attention from the press and adverse reaction in the legislatures. Consider that before 2008, foreclosure was an effective remedy because individuals had equity in their homes; the association, therefore, was awarded enough money to justify the effort and expense. After 2008, however, foreclosure was no longer an effective remedy because there was often no equity in the homes.

Foreclosures—either for small amounts of money or against people who inspire sympathy (families, single mothers, the elderly)—are the collection actions that generate bad press. Many other foreclosure actions, however, go unnoticed by the press. This is especially true of judicial foreclosures, as both the public and the legislatures leave it to the courts to determine what is fair. Unfortunately, the trend today is to afford delinquent owners additional rights prior to, or in lieu of, legal action.

Depending on a state's statutes, foreclose can be executed judicially or non-judicially. Non-judicial foreclosures are relatively easy and much less expensive for associations. But they're the actions that generate horror stories that outrage the public and, in turn, galvanize legislators into potentially misguided action. Legislators don't like the fact that association boards can foreclose on their neighbors without court intervention, and a sensational case can provoke reactionary, knee-jerk legislation. Judicial foreclosures, on the other hand, are time consuming, expensive and onerous for the association.

An increasing number of states (i.e., Texas) are requiring full or expedited judicial foreclosures—similar to the process lenders are required to follow. Given all its process and cost, judicial foreclosure moderates the ease of nonjudicial foreclosures for associations. While state statute may prohibit the number of nonjudicial foreclosures, it is unlikely to eliminate foreclosure altogether.

One logical approach would be for mortgage lenders to escrow and pay assessments similar to the way taxes and insurance are currently handled. This also has the advantage of eliminating priority lien questions. Unfortunately, while this was a common practice in the 1980s, many lenders eventually eliminated this option because it meant more work on their part. However, the panel is aware of one piece of special legislation in Maryland that requires lenders to collect all assessments from units and lots within the Columbia Association, but this legislation does not apply to any other association in

the state. Similar legislation elsewhere is unlikely, given that the banking lobby in every state is larger, stronger and more influential than the community association lobby.

Some states are providing other enforcement options. In Illinois, for example, associations are allowed to evict delinquent resident owners; they still own their home, but they can't live in it. The association then has the power to collect the rent generated by the home to offset the delinquent assessments.

In lieu of foreclosure, associations in Maryland and several other states, obtain a money judgment against an owner. To collect on the judgment, the association has several options, including garnishing wages, attaching bank accounts or other property the owner may have and, eventually, the local sheriff levying on the unit—which is another form of divestiture of ownership like foreclosure. This example may be ineffective in states that prohibit community associations from garnishing wages to collect on a judgment.

Some states, including Colorado, allow associations to have a receiver appointed to collect delinquent assessments. If the house isn't owner occupied, the association goes to court and has a receiver appointed who then rents the property and/or collects rents from an existing tenant. These rents are then applied to the owner's outstanding delinquency.

RESERVES

Despite their obvious value, inadequately funded reserves remain the biggest challenge for nearly all community associations. Economic conditions in recent years severely diminished many associations' reserves, and few have been able to catch up. These same economic conditions slowed the housing market in many parts of the country, and subsequently increased the time from groundbreaking to turnover from three to ten years in some instances. Developers who now face an extended sales period have little incentive to fund reserves. Instead, some fund reserves just before turnover, while others follow best practices and fund reserves according to the reserve study recommendations. Still others believe the newly-established homeowner board is responsible for funding the reserves, and the new community effectively starts out with an inadequate reserve fund. Subsequent assessment increases necessary to catch up reserve funding then create a financial burden for new owners.

Although many state statutes now require associations to conduct some type of reserve study, some of these same statutes also include loopholes and exemptions that allow associations to forego funding. State reserve laws and governing document requirements notwithstanding, many associations are not adequately funding their reserves. For very small associations with no amenities and no structural maintenance requirement, there may be no need for reserve funding and any such state requirement should be relaxed or eliminated for those associations. The Uniform Common Interest Ownership Act (UCIOA) exempts homeowners associations and associations with fewer than 25 units from the reserves requirement.

Uninformed homeowners perceive reserves as increased financial burdens rather than financial protections. They remain unaware of the financial burden that a future special assessment may cause them and their neighbors. Conversely, informed buyers know exactly what a small reserve fund means—special assessments or escalating assessment increases—and they will go elsewhere to find a home. But, these buyers are likely to remain a minority. Older residents living on fixed incomes are particularly hard hit by precipitous assessment increases or by the special assessments that are required to make up the reserve fund shortfall.

SELLING RESERVES AS CONSUMER PROTECTION

If developers, legislators and other key players truly understood the costs to run an association, they might take a different approach to funding reserves before transitioning an association to

homeowners' control. It is a woefully common scenario to see an individual or family stretch their financial envelope when buying a new home, only to lose that home when they get hit with hefty annual assessment increases or special assessments. This is one reason that FHA has placed special requirements on reserve funding in their loan approval process. It is unfortunate, however, that this requirement currently applies only to condominium mortgages.

Education and voluntary compliance will be one of many challenges faced by community associations in the future. The ideal scenario would have model statutes or state statutes require developers to turn over an association with a completed reserve study and adequately funded reserves.

Representing reserves as a form of consumer protection might succeed in accomplishing this.

Realistically, however, such attempts would likely be opposed by other special interest groups—those who have an agenda to keep association fees artificially low, or those who represent delinquent owners. Presenting reserves as an enhancement to property value for savvy buyers (and thus sellers) would likely be more effective.

THE PATH TO ESCROW

Like FHA approvals, legislation requiring associations to have a reserve study prepared by a qualified professional and to fund reserves based on such a study would have a positive effect on associations. However, persuading developers to put reserve requirements in the documents may be easier than changing legislation. Ideally, developers would draft documents that allow associations to require buyers to select lenders who will escrow association assessments and reserves just like insurance and taxes. However, few are aware of this and fewer are doing it. Columbia, Maryland, is an exception. State law requires lenders to escrow Columbia Association assessments—but that law only applies to Columbia Association, not other associations in Maryland. Even states that mandate reserves allow a lot of leeway and have loopholes that eviscerate the requirement.

HOMEBUYER UNDERSTANDING

The process of buying a home does not foster homeowner understanding of the nature and obligations of living in a community association. Buyers do not always have full access to information about the association and its finances. And, assuming buyers can locate disclosures in their closing documents, and that they actually read them, they often find them difficult to understand.

Most association financial woes could be significantly reduced if home buyers had clear, unambiguous, understandable documents and more disclosure *before* purchase. MLS is developing a rating system for association finances—including reserves—that will be included on the MLS listing. This is a good start, but will house hunters understand the meaning and value of the rating? And will realtors steer clients away from associations with under-funded reserves if a sale is possible?

The panel believes that a one- or two-page disclosure checklist would be valuable. The contract purchaser initials each entry and certifies having read and understood the disclosures. Such a checklist, or other similar tool, could be a joint project of CAI, NAHB and NAR, for example.

Market incentives may be more effective than regulation, which tends to have loopholes or lead to lawsuits. The panel recommends that CAI pursue joint ventures with the National Association of Realtors, NAHB and others not only to create meaningful financial rating systems but to educate their members about using the system to everyone's advantage. It would be beneficial to provide financial and operational information to assist the potential buyer in selecting a home in a community that most closely fits his or her economic, social and cultural needs. But that, alone, is not enough. Many owners remain uninformed and maintain unrealistic expectations of associations. Not understanding what they bought into, they expect boards and managers to take care of everything at no or low cost. Adjusting homeowner expectations will remain a significant challenge in the future.

Future Resident Demographics Will Change Everything.

Naturally occurring retirement communities (NORCs) are going to proliferate in the next 10 to 15 years. Many associations will find themselves evolving into assisted living facilities, even though they're not prepared for the additional burdens that will be placed on them by aging residents. Many governing documents contain restrictions on use or other provisions that preclude providing additional services to certain members such as the elderly; nevertheless, aging residents will expect, perhaps demand, that associations make it possible for them to remain in their homes. Consequently, future associations may have to depend more on outside services to meet the needs of older residents.

These needs will entail not only the Activities of Daily Living (ADLs) but also will often require support to provide for the Incidental Activities of Daily Living (IADLs). The former category entails taking care of bodily needs, and the later category includes activities primarily associated with household needs. Aging in place is by far the preference of older residents, and access to support for both ADL and IADL is key to allowing them to do so.

Managers and community association professionals will need to prepare their association clients for the accelerated changes in NORCs. Some older residents may require round-the-clock (live-in) caregivers—both contracted healthcare providers and also family members. This requirement may create a conflict with occupancy requirements. Group homes, for example, might run afoul of single-family home requirements.

Scheduled (drop-in) caregivers will create increased traffic and need more visitor parking. The same holds true for deliveries and medical services that will increase the need for short-term parking or concierge services from the association. Restrictions on design modifications may give way to caregiver quarters or mother-in-law suites for elderly parents. And, caregivers may want access to amenities.

Associations in the future may find it necessary to repurpose amenities to accommodate aging residents. For example, unused playgrounds could be converted into gardens or parks. Unused clubhouses—or unused portions, at least—might become rehab or therapy facilities. Ironically, Millennials will unknowingly contribute to a developing NORC—particularly where amenities are being modified for older adults—by moving out. As communities transform into elder-friendly places, other older adults will begin to move in.

MILLENNIALS

Millennials will have a profound influence on the housing market in general and community associations in particular. They're currently about 18 to 34 years old, and in roughly 15 years will be 33 to 49 and in need of housing. Millennials grew up during the recession, lived through the instability of the housing market collapse, and many saw their parents lose their homes to foreclosure. Consequently, they may have less commitment to the future and to putting down roots, and may be more likely to rent.

As a demographic group, millennials are seen to be both anti-bureaucratic and anti-institution. But they place much value on their social connections. In fact, social connections are more important than geographic connections to millennials. They tend to be flexible about living accommodations—what the Boomers would call *transient*.

Consequently, some millennials are not as committed to building toward a dream home or retirement and, by extension, would place less importance and value on reserves. For economic reasons, some will wait longer to buy a home, and some will partner with friends to co-own homes. In the interim,

they will rent. When they do buy, it's likely to be only for a couple years. Because millennials value connections and social causes, they will tend to buy in a community with a social purpose they have created, influenced or are deeply committed to.

Millennials tend to make decisions informally, using lots of email and texting. They tend to have an inclusive communication style and want to bring all residents into a discussion.

Because the Millennial demographic is very likely to change the housing market for the next 15-20 years, the lending industry likely will be motivated to create new products tailored to them—rent-to-own mortgages and portable mortgages that follow buyers as they move about.

Millennials (because they are less permanent) and Boomers (because they will be diminished in numbers and influence) may exacerbate the difficulty that associations will have seating a viable volunteer board.

Millennials tend to make decisions informally, using lots of e-mail and texting—methods that boomers will regard as slapdash. Boomers will adhere to the board meeting concept that millennials will find tedious and unnecessary. Many governing documents have bare minimum requirements for meetings and transparency that millennials will want to enforce. However, millennials are likely to find these requirements outdated and impractical in a few years; they are likely—eventually—to amend documents and association procedures manuals to provide for fewer meetings, decision making by e-mail or text and homeowner engagement via social media.

ETHNIC DIVERSITY

According to the Pew Foundation, Hispanics and Asians are the fastest growing ethnic groups in the U.S. By 2060, Hispanics and Asians will make up 39 percent of the population—almost double the percentage in 2015. Language and cultural differences in the general population will require equivalent changes in association management and governance to prevent disenfranchising these homeowners.

Associations will become less homogenous as other ethnic groups gravitate to communities where their culture is substantially represented. (This is analogous to the Little Italy, Chinatown and Little Havana neighborhoods that developed in previous generations.) Hispanic, Asian and other ethnic association managers will be in demand, and bilingualism will be a valued job requirement. In all likelihood, it will be easier (and more practical for peaceful association living) to provide multi-lingual governing documents, rules, newsletters and websites to residents than to expect them to learn English.

Technology Must Become A Priority.

The future becomes a little easier to predict when discussing technology. No one will argue that the future holds ever-increasing advances in technology. And, while we may not know exactly how the next gadget or app will dazzle us, we have no doubt we will indeed be dazzled. But, leaving aside the future of technology, we need to look at the present state of technology relative to today's community associations.

While many community associations are not keeping up with technology, other community associations and community management companies are already using sophisticated technology to manage and govern their communities. On the whole, however, community associations could be taking better advantage of technology. This panel expects to see swift advances in technology as more tech-savvy volunteers and professionals grow into this business.

“Failure to communicate” is frequently cited as the leading contributor to association conflicts. Even today, technology certainly presents copious solutions to this problem: websites, broadcast e-mail, online meetings, pod casts, FaceTime, video conferencing, mobile apps, texting, streaming, etc. The list gets longer every day. And, even now, our communication modalities must be *optimized* for the small-screen world of mobile devices—smart phones, tablets, notebooks.

As an ever-younger cadre of residents populate our communities, associations will find it imperative to accommodate electronic communication and be prepared to conduct business electronically.

CYBER SECURITY

The growing magnitude and sheer audacity of computer hacks around the world in 2015 have already rendered *cyber security* an oxymoron. Even when the term still had some substance, associations were far behind with their online security.

Cyber criminals on the other hand, adapt quickly. Associations can expect to be targeted more frequently as these criminals realize that many associations have substantial reserves and are vulnerable because they use relatively unsophisticated network security technology. Upgrading technology is an obvious recommendation; however, it seems unlikely that most associations will have the resources to implement cutting-edge cyber protections in the foreseeable future. Also, hiring a specialist to conduct a security audit of the association’s technology systems might be a good first step in closing electronic doors hackers might otherwise use to access your data.

In the meantime, associations can and should take steps to protect against what they cannot prevent. For example, this panel suggests all associations pursue protections such as data processing endorsement to property coverage and require mandatory fidelity insurance—preferably built into the governing documents, when possible, so boards cannot opt out. Although fidelity insurance does not cover funds that are hacked by cyber thieves, it protects against internal malfeasance, which has been the most common and most preventable crime experienced by associations to date. Therefore, managers, management companies and board members should be insureds on the association’s fidelity insurance policy. Unfortunately, insider embezzlers are not deterred by threats of punishment because most are “judgment proof.” Recent cases have shown that insurance covers the losses and, in some cases, the embezzler faces only a few months’ incarceration or merely probation—and then is often hired by another association.

Requiring mandatory manager licensing can provide an additional layer of protection. Although this is no guarantee against embezzlement, having a manager who has earned the Certified Manager of Community Associations (CMCA) certification, or a Professional Community Association Manager (PCAM) or an Association Management Specialist (AMS) designation may limit an association’s exposure. Also, it goes without saying, implementing well-proven financial policies and procedures adds protections—whether online or not.

Law Makers Unwittingly Perpetuate Problems.

It isn’t unreasonable to state that being a community association board member (particularly in large associations) is analogous to being a city council member.

City or county council members are not required to be accredited or to have special qualifications or training. Furthermore, the state does not legislate public servants’ qualifications. So the state is not involved if council members perform poorly or things go wrong. Associations, on the other hand, are regulated by the state. So legislators do get complaints when things go wrong in a community association. Combine this with legislators’ emerging realization that significant sums of money are collected by associations and short-sighted, knee-jerk legislation ensues.

Most legislators do not thoroughly understand common-interest communities or who their patchwork legislation is actually protecting. Legislators too often shoot from the hip, passing laws that ricochet and cause collateral damage. And they will continue to do so in the future unless the CIC interests undertake vigorous lobbying and education programs, and awareness campaigns to enhance their understanding.

It's likely that increased legislative attention to CICs in the future will exceed volunteers' capacity to advocate on the associations' behalf. As community associations become a larger issue for legislators, boards and their associations will increasingly need a voice—their own professional lobbyists—to advocate for them in the state legislatures and local jurisdictions.

While CAI plays a large role in advocating for associations, it is possible that management companies and homeowners may arrive at a point in the future where they require lobbyists representing their specific interests. Eventually, CAI's leaders will need to take a hard look at the conundrum of advocating on behalf of community associations and board members when there may be CAI members on opposite sides of a legislative or federal issue.

Although homeowners, boards, developers, managers, attorneys and others are all involved in developing communities and creating associations, each group has its own specific interests as well as a trade group to represent those interests. Frequently, all these groups have the same interests and goals. But they don't seem to realize they're all part of the same whole. Moreover, other groups such as consumer rights groups, the banking lobby and realtor's groups have divergent interests and greater wherewithal with which to pursue their goals. So coalition with disparate interest groups will become increasingly important for CAI and its members.

The Association Governance Model Panel

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