



McGOWAN PROGRAM ADMINISTRATORS

The Four C's of a Successful Community Association





If you were to take a poll of community association members asking them what they want out of community association living, they would probably say: (1) perpetually increasing property values, (2) continually decreasing assessments, (3) ageless common amenities, (4) minimal participation requirements and (5) invisible or perfect neighbors.

Most community association members want to have their cake and eat it too. In other words, they want to have their quid without the pro quo. Anyone who chooses to live in a common interest development and does not understand that by doing so they will be giving up something or that they may need to compromise with other common owners will undoubtedly experience some unfulfilled expectation. These may also be the same people who do not understand that ignorance of the governing documents or applicable law is not a defense to their unfulfilled expectation.

Having insured tens of thousands of community associations and having reviewed thousands of community association director and officer claims, I believe there are four key elements supporting a successful community association.

- 1. Communication**
- 2. Civility**
- 3. Continuity**
- 4. Certainty**



The more a community association sticks to these simple concepts, the fewer claims, disputes, drama and stress there will be in the community.

Intellectually, we all know the importance of “communication.” My wife reminds me every morning - “communicate honey.” (This is the politically correct translation.”). Communication, however, is not always simple. It requires discipline. Not only must we share our thoughts with as few assumptions as possible, but we must listen also with as few assumptions as possible.

Professor Kallay (the Kingsfield” of my legal education) taught me in first year civil procedure to avoid making assumptions. My youngest son has reminded me frequently that when you assume: it makes an “ass” out of “u” and “me.” Community association board members as well as unit owners must avoid assumptions as much as possible. The biggest assumption to avoid is that governing documents and statutes are premised on logic and common sense. The keystone to communication is for boards and unit owners to do their homework before they buy in an association and before they complain and challenge board decisions and conduct. Do not assume that the governing documents necessarily correspond to your universe or that

the law or documents have not changed. Although you need to avoid assumptions, the courts will presume that you know the law and your documents. My Quality of Management Worksheet setting out a board's fiduciary obligation starts with the question: "have all your board members read the association's by-laws." Virtually everyone I give the worksheet to laughs when they read that. If it were up to me, I would require that each unit buyer read the by-laws out loud before they can sign the closing documents. Tip: Read the governing documents and know the corresponding relevant law.

The next "C" is civility. The challenge to the first "C" is that no matter how well you communicate or how disciplined you are, others may have been absent when the communication occurred. Ignorance in a community association can be bliss until the board does something a unit owner does not like. As my wife, the source of most my wisdom has told me over the years as we raised four teenagers, "remember you are the adult" and "do not react" immediately to their emotion. I pass my wife's wisdom to boards. If you listen, you will probably hear what they are saying or sometimes just as important, you will hear what they are not saying. Sometimes, the opportunity to express a concern to an audience who will actually listen will resolve the issue. The lack of civility is never defeated when met with the lack of civility. Civility is tied to communication, because it is often caused by assumptions or lack of information leading to a miscommunication.

The third "C" is certainty. Community associations are "not for profit" "budget driven" entities. I analogize them to diabetics. The goal is to keep a diabetic's blood sugar as level as possible with minimal spikes up or down. The spikes are what lead to permanent damage. Similarly, a community association's goal is to maintain its budget as level as possible to protect the association's assets and avoiding surprises. Is a spike in blood sugar going to happen, yes? The best an association can do is using those tools available to them and rely on community association professionals who can keep them apprised of change.

A properly prepared reserve study is the keystone to certainty. This is the best kept secret/non-secret for community associations. A properly completed, updated and funded reserve study is like checking and keeping track of the association's blood sugar as recommended by your doctor. If you properly check, adjustments can be easily made; however, if it is not checked you can develop larger problems that may require significant expense to repair, or maybe something will be beyond repair. In my humble opinion, any board that chooses not to properly fund its reserve study as recommended (unless all the members are independently wealthy, which we have seen), is breaching its fiduciary obligation or duty of care. A properly prepared and funded reserve study is an insurance policy for those elements that cannot be insured - "wear and tear."

Finally, the fourth "C" is continuity. Volunteer community association boards need to operate in a manner that fosters continuity. This begins with staggered board terms making room for experience while bringing in new blood. This continues with proper maintenance of records, minutes and contracts. Finally, this is supported by the use of qualified community association professionals including, but not limited to community association managers, attorneys, insurance professionals, accountants, bankers and reserve specialists.

Will associations always be successful if they follow the four Cs, probably not? However, they will have a much greater chance. The hardest part is there are no short cuts, but it is much harder and takes far more time to fix something than taking the time to do it right in the first place.

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About Us

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As early as the mid-1950s, we recognized the power of specialization and began writing commercial affinity business. Since that time, and catapulted by the Federal Liability Risk Retention Act of 1986, we transformed ourselves from a large regional retailer into one of the country's first Program Managers. For the past 6 decades, we have dedicated ourselves to program business. Our philosophy has always been to deliver products to our brokers which allow them to distinguish themselves from their competition, from both a pricing and coverage perspective. At the same time, we have delivered extraordinary long-term profitability to our carriers. Satisfying the dual objectives of our brokers and carriers has made us an extremely-stable platform, which is a rare commodity in the insurance industry.

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Directors & Officers Program Coverage

PROGRAM OVERVIEW

ELIGIBLE CLASSES:

- Commercial Associations
- Common Interest Developments
- Condo Hotels
- Condominium Associations
- Cooperatives
- Homeowners Associations (HOAs)
- Master Associations
- Planned Unit Developments (PUDs)
- Property Owners Associations
- Rental Pool Associations
- Timeshares
- Townhome Associations

Products: Directors & Officers Liability (Including EPLI)

Limits: \$1MM-\$5MM

Carrier: "A" Rated Carriers/Admitted Paper

Territory: All 50 States

Special Features & Coverages:

- Defense & Indemnity of Monetary Claims
- Defense of Non-Monetary Claims
- Insured Includes Directors & Officers, Entity, Property Manager, Volunteers, Committee Members, Employees & Leased Employees
- Defense of Breach of Third Party Contract Claims
- Defense of Failure to Maintain or Obtain Insurance Claims
- Developers on the Board / Controlled Boards Qualify
- Third Party Discrimination

Common Area Accident Coverage

- Accident Medical Expense – \$10,000 (per person)
- Deductible – \$0
- Accidental Death – \$5,000
- Accidental Dismemberment – \$5,000
- Paralysis – \$5,000
- Aggregate Limit – \$100,000 (per person)

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