

Association of Condominium,  
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Homeowners Associations



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**May 2011**

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**Who Controls the Wires?**

*By: Robert Neumann of Access Media 3*

All competitive telecom and cable companies serving multiple dwelling units (MDUs) have heard dominant telecom companies or cable companies' (referred to as "CableCo") claim to have originally installed the backbone and/or horizontal wires to a building. This CableCo assertion appears to be prevalent across most cities and states and is not confined to a few large dominant providers – it appears to be a claim by most, if not all, dominant providers. Competitive, private cable and services firms should always question this claim. On its face, the claim that the wires are owned or controlled by a dominant provider seems plausible since a CableCo may have been at the property prior to the competitive provider.

However, it has become abundantly clear that a dominant provider should have to prove its assertion of ownership or control of wires. Association properties control and own the private property. The onus of proving "control" or "ownership" of the wires has to be placed on CableCo. Proof of owning or controlling the wires has to be in writing. Verbal statements intended to scare the MDU or other providers are not acceptable.

Every competitive provider and MDU must ask the simple question: "Prove your assertion of ownership or control with documentation." This test produces interesting results. The majority of responses from CableCos fail to produce valid documentation. For a telecom or cable company to actually prove they control or own the wires, they have to produce a document (e.g., title, easements, some form of perpetual access rights to the property) that states that the company has an easement, an ownership interest or other controlling right to continued control of the wires inside a private building.

*Continued on page 5*

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# TIP OF THE MONTH

## A Closer Look at Tree Roots: Air Excavation

Take a look at your trees. It's relatively easy to see the limb that needs to be pruned, the leaf that is yellowing, or the borer hole in the bark. However, it isn't exactly easy to get a glimpse at the issues that lie beneath the soil; roots girdling your tree's trunk, being attacked by root rot and decay fungi, or suffocating under compacted soils. Fortunately, arborists can see beneath the soil – thanks to a process called air excavation.

It is no surprise that the root system plays a vital role to the health of your tree. We all learned in grade school that a tree's roots absorb water and nutrients from the soil. But they do more; a root system stores the tree's energy reserves, offers structural support, and allows for the exchange of gasses.

What many do not realize is that 80% of a tree's roots are located within 2-3 feet of the soil surface and spread as much as 2 to 3 times the height of the tree. A tree's root system is massive, but it is also delicate. Because of its size and placement, a tree's root system is quite susceptible to stresses induced by compacted soils, poor planting conditions, or construction work.

Until recently, the only way to inspect a tree's roots was to conduct a sort of archeological dig. The process was time consuming and had the potential of doing more harm than good. However, through the use of compressed air and the process of air excavation, a tree's roots can be exposed with minimal damage to the root structure.

It seems odd. You would think that highly pressurized air shot at a tree's roots would cause some sort of damage. However, because tree roots are not porous, they are not disturbed by air excavation.

The procedure has proven to be invaluable in performing a number of diagnostic evaluations. Air excavation can be used to inspect root collars, prevent and mitigate construction damage, perform soil replacement therapy, transplant trees, conduct arboricultural research, or even deter the spread of diseases like Dutch elm disease and oak wilt by uncovering root grafts.

The information learned from actually looking at the roots can help arborists take the steps necessary to safeguard your tree's health and avoid much more costly issues in the future. During a root collar inspection, an arborist is able to determine if the tree was planted too deeply, to diagnose root rot or existing root injuries, and to remove girdling roots. At construction sites – before or after you build that addition to your home – the process makes it possible to properly prune roots that are at risk of being damaged, to install utilities around roots, and to relieve soil compaction.

It's amazing how much can be accomplished when you can actually see the task at hand!

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## PROBLEM ASSOCIATION? NEED A MEDIATOR?

ACTHA hears from board members and owners consistently on any number of issues causing grief in their community. The ACTHA office is frequently asked if a governmental entity exists to intervene on issues where the law is clear but the board and/or owner refuses to comply. Pursuing the situation legally is sometimes not an option.

A solution often brought up is the creation of an Ombudsman's Office for Illinois. Bills have been introduced to create same but have not moved forward in the Illinois General Assembly. In addition, ACTHA sees administrative problems with the way they are currently drafted. Nevertheless, the concept is intriguing and ACTHA is looking to see what improvements might be offered to make this concept a reality.

*Are you interested? Are you willing to work on this legislative initiative?* If so, please contact [gael@actha.org](mailto:gael@actha.org). We are looking to have this ad hoc committee meet sometime this summer.

## ANNOUNCEMENTS

- ACTHA would like to thank **The Acres Group** for hosting the Learn and Lead series at their Plainfield facility
- ACTHA is *reviewing its website* to see how it might be made more relevant to its members. If you have suggestions, contact [gael@actha.org](mailto:gael@actha.org) or call 312-987-1906
- Educational programming for the two Fall Expo's are now posted on the website so **MARK YOUR CALENDAR!** Sat., Oct 1 in Deerfield and Sat., Oct. 15 in Tinley Park
- ACTHA will host a **"Legislative Process" webinar** on Thurs., June 16. This is a "trial run" but if you are interested in participating, email [kevin@actha.org](mailto:kevin@actha.org). There is no charge for participating.



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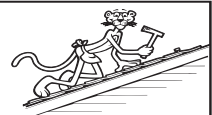
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Continued from page 1

Most of the time CableCos provide right of entry agreements or wiring installation agreements that contain no language whatsoever that states the telecom or cable company owns or controls or has continued rights to the wires inside the building. This language is crucial and if it is not present, each and every MDU owner or manager should feel confident to deny any such claim of control or ownership. Real estate rights in the United States are sacred and protected by law – these rights are very local and any assertion that is contrary to complete control of real estate has to be documented as an ongoing right that runs parallel to the property owner's rights and interests in the property.

An interesting issue is that even in mandatory access states, dominant providers, CableCos, still attempt to keep monopoly control of buildings by asserting some type of "control" or "ownership" argument. Minnesota is one of 18 states with a mandatory access law that requires a building owner to grant a right of entry to a service provider that wants to offer their product to residents. In Minnesota, the cable communications system that

installed the equipment must also allow alternative providers to use the equipment if some of the MDU residents choose to subscribe to the services of an alternative provider.

It should be clear that real estate rights, property rights, are established by law and are controlled at the local level (states, counties and cities). Based on this local nature to real estate law the FCC and most state public utility commissions have stayed away from legislation or drafting rules that infringe on local governments control of real estate laws. This is why the large telecom and cable companies have focused on using this previously grey area of the law to block private telecom or cable companies from entering buildings that are or were previously serviced by an incumbent telecom or cable company. The control of the inside wire was not always documented properly and the incumbent providers were, in many instances, the first companies to provide services to buildings. However, that does not mean those companies continue to control or own the wires.

*Access Media 3*


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## **Congratulations!**

**Barry Branch** of River Pointe C.A. in Des Plaines, **Bob LaMontagne** of Hinsdale Village C.A. in Willowbrook and **Michael McCormick** of Shore Manor C.A. in Chicago were re-elected to ACTHA's Board. **Diane Pagoulatos** of Whispering Lake T.A. in Lake Bluff and Joyce Sampson of 5319 S. Woodlawn C.A. in Chicago were elected. Both had been appointed in January to fill vacancies. These are two year terms expiring in 2013.

ACTHA would like to congratulate **Sue Carter** of Monaldi Manor Condominium Association in Lansing and **Harley Chapman** of Village Green Townhome Association in Palatine. Sue won a free registration to an ACTHA Fall Expo. Harley won a free one-year membership to ACTHA. And all for just completing the Spring Conference survey!

## LEGISLATIVE CORNER

BY: Richard Lockhart of Social Engineering Associates

Very little legislation affecting community associations has moved through the process this year, including ACTHA's efforts to repeal the tax on associations for the implementation and enforcement of the recently enacted Community Association Manager Licensing Act. Although ACTHA reached a compromise with CAI (which opposed this initiative) and with the original sponsors, Senator A. J. Wilhelmi and Representative Elaine Nekritz, it drew opposition from other quarters. In the compromise self-managed and master associations would have been exempt from the tax and the Department would have been mandated to annually prepare a report of how much was being raised from all sources of revenue under the Act as well as a detailed accounting of expenses. Also included in the compromise was the responsibility of the Secretary of State's office to collect the tax and language to prohibit using these funds for general revenue purposes. The latter drew opposition from the Secretary of State's office as well as Speaker Madigan. Despite ACTHA's willingness to drop this language, the Speaker's Office did not allow the bill to proceed.

In the meantime, the Department has issued proposed rules for the implementation and enforcement of the above-cited Act. The general public will have until June 20 to comment on the proposed rules. If you are interested in obtaining a copy, contact [gael@actha.org](mailto:gael@actha.org)

S. B 1651 (Wilhelmi) seeks to address "clean-up" to the recently enacted Community Association Act. A major problem in the original legislation is the creation of at-large master association boards. Many associations faced objection to this provision and S.B. 1651 seeks to address that concern among other items.

To view all bills introduced relating to community associations and their status, go to [www.actha.org](http://www.actha.org) and click on "Legislative Activity."



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## Question of the Month

*By: Ebony Lucas of Peace of Mind Properties  
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**Q.** Is there any legal action that an association board can take in regard to a hoarder?

**A.** Hoarding attracts rodents and other pests which could cause damage to other units. The Illinois Condominium Property Act grants the board the right to adopt rules and regulations. The association can then fine unit owners for failure to abide by such rules. The board should have a rule in place which states that unit owners must keep their units in a manner which does not interfere with other units including, but not limited to, maintenance of the unit from horders and trash which might attract rodents or pests. In addition, pursuant to Section 18.4 of the Illinois Condominium Act, the board has the power to have access to each unit to prevent damage to the common elements or to other units. If necessary, the board can enter these units for the purpose of pest control. Further, if the hoarding causes the spread of pests, bed bugs, or rodents, the board can assess the cost of pest control for other units to the offending unit owner. Any fines or assessments can be enforced in court.