

Association of Condominium,  
Townhouse, and  
Homeowners Associations



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## February 2009

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### Upcoming ACTHA Events

**ACTHA South Suburban Expo—  
"What's Cooking in Community  
Associations": Saturday, March 7**  
**"Learn and Lead" program: Mar. 12  
in Des Plaines**  
*For details, visit [www.actha.org](http://www.actha.org)*

## Use of Evictions to Collect Amounts Due Community Associations

*By: Barry Kreisler of Law Offices of Barry Kreisler, PC.*

Today's severe recession is forcing many of us to make unpleasant choices as to which bills to pay. The mortgage crisis makes such decisions even harder for condominium and town home owners, some of whom have fallen behind in payment of assessments, unfortunately thereby transferring their own financial problems into financial problems for their associations.

An Illinois Condominium Association Board has both a fiduciary and statutory duty to collect all assessments. The Condominium Act does not give the Board discretion to reduce assessments due from a delinquent unit owner, although it can compromise the amount of fines, attorney fees or other collection costs.

### COLLECTION OPTIONS

Several collection options are available to an Illinois Condominium or Town Home Association. The Association can file a lien, foreclose the lien and eventually force a court ordered sale of a unit. The Association can also seek a personal judgment against an owner, allowing collection from all nonexempt assets or earnings.

The most powerful collection option is the right of an Illinois Condominium or electing Town Home Association to evict the owner from the right to possess the unit. The Association can then rent the unit and use the rent to pay the past due as well as current assessments and the Association's collection costs. This is especially effective in the case of an absentee owner who has rented the unit, as the eviction action need not be served on and can leave the tenant in place and simply terminate in the Association's favor the owner's right to collect the rent.

### THE EVICTION PROCESS

Once the Association has decided to pursue eviction with respect to a delinquent unit owner, the Board should adopt a resolution to employ an attorney and begin collection procedures. The first step is to serve the owner with a 30 day Notice and Demand for Possession, meeting the requirements of the Eviction Statute and the federal Fair Debt Collection Practices Act. The

*Continued on page 4*



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## TIP OF THE MONTH

Did you know that you can reduce the amount of dirt and stains that penetrate painted surfaces? Imagine a high traffic area with no fingerprints, or at least one that is easier to clean. The most important step in stain resistance is the application of primer. Priming the surface seals the surface and prevents your top coat from soaking into the surface. This provides maximum film thickness of your top coat, which creates a greater barrier against stains. The next step is to use a *high* quality top coat. High quality paints contain more binder, which helps prevent stains from penetrating the painted surface and makes it easier to remove stains that do occur.

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Notice is served by personal service or by registered or certified mail, return receipt requested. If properly mailed, the Notice is effective upon mailing and need not even be actually received by the owner. Unless all amounts demanded under a properly prepared Notice are paid in full within the 30 days or the Association or its representative agrees in consideration of partial payment to withdraw the Notice, the Notice continues effective even if partial payments are accepted.

After 30 days have passed without payment in full, an eviction action may be commenced by filing the Circuit Court and service of summons on the owner by the Sheriff. The action can be filed as a "joint action", to seek both judgment for possession and a personal judgment enforceable against all nonexempt assets or earnings of the owner. The summons must be served at least seven days before the trial date specified in the summons but the trial date can be as few as three or four weeks after suit is filed.

There are provisions for using a private special process server, if the Sheriff is unable to obtain service and if all else fails, there can be constructive service by posting or publication and mailing. In the case of constructive service, the Association can obtain what is called an *in rem* judgment,



**Several collection options are available to community associations**

against the unit itself but not a personal judgment against the owner; however, constructive service still permits the eviction to proceed.

**TRIAL AND JUDGMENT**

If the delinquent unit owner does not contest the proceeding, judgment may be by affidavit, with no Court appearance by the Association or management company. If facts are disputed, a trial will be held to resolve any disputed issues. By statute, enforcement of the eviction judgment must be stayed for at least 60 but no more than 180 days, at the discretion of the court. Once the stay expires, the Association may serve a copy of the judgment on the tenant in the case of a leased unit or in the case of an owner occupant, may employ the sheriff to execute the order to evict the owner. The Association may thereafter collect rent from an existing tenant or lease the unit to a bona fide new tenant, using the rent collected to reduce the amounts determined by the court to be due from the defaulting unit owner and to pay leasing costs and current assessments.

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## LEGISLATIVE CORNER

ACTHA plans on introducing legislation which would amend the Illinois Condominium Property Act (ICPA). The proposed changes are the product of an Ad Hoc Committee\* which has been working diligently for the past year. Much of the proposed language is the result of comments we heard at the public hearings the State Advisory Council conducted in the fall. Changes ACTHA is proposing are as follows (to view the exact language visit [www.actha.org](http://www.actha.org) and click on “Legislative/Current Topic”):

- ⇒ New language to require mortgage lenders to be responsible for paying assessments once the foreclosure proceeding has begun (applicable to condominium units and to other common interest entities)
- ⇒ A definition of what constitutes a board meeting
- ⇒ Clarification of what “itemized accounting” includes for associations of 30 or more units and a time frame for providing same
- ⇒ New language to allow owners to sue boards when there is willful and wanton action; other criteria are outlined before this type of lawsuit can be filed
- ⇒ New language specifying documents a board must provide upon sale of a unit (if requested)
- ⇒ New language to require developers put funds into an escrow account for two years to cover developer defects

ACTHA is also working on language to address the vagueness and inconsistencies regarding insurance. We also recognize that there are special issues relative to smaller associations which we have yet to address but hope to do so in the near future.

*\* Committee members: Mike Kim of Mike Kim & Associates, Co-chair, George Panagakis of ACTHA, Co-Chair, Nancy Ayers of Mesirov Financial, Frank Coleman of Community Advantage, David Hartwell of Penland & Hartwell, Beth Lloyd of ACTHA, Pat Spear of 505 N. Lake Shore Dr. CA, Mike Rutkowski of First Properties and Mary Swindal of Pilgrim Management.*

## “A Good Deed Gets a Tree”

ACTHA is pleased to partner with **Acres Group** in a special event at our **South Suburban Expo** on Saturday, March 7, 2009 in Orland Park.\*

Acres Group is donating a tree to all associations bringing in 200 lbs. of food,\*\* a contribution of \$500, or a combination thereof. Each tree has a value of \$500 and will be delivered and installed at no charge to eligible associations.

The **Northern Illinois Food Bank**, which works with local food banks in this area will be at the event site (Palos Country Club from 8—noon) to check-in contributions that day. We hope you will join ACTHA, Acres Group and the Northern Illinois Food Bank in this worthwhile effort— a “win-win” for everyone!

\* For program details and to register, see page 6

\*\* To view list of acceptable items, visit ACTHA’s web site: [www.actha.org](http://www.actha.org) and click on “Education/South Suburban Expo”),

## BECOME ACTHA CERTIFIED!

### WHY?

- ⇒ Be a well-rounded and knowledgeable leader in your association
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  - ⇒ Obtain the skills and tools to make you more respected and influential in your association

**For more info and 2009 dates/locations: Call 312-987-1906 or visit [www.actha.org/Benefits of Certification](http://www.actha.org/Benefits of Certification)**

# ACTHA South Suburban Expo Educational Programs

For other info including how to receive a tree from Acres Group, "Coffee with the Mayors" and trade show exhibitors, visit [www.actha.org](http://www.actha.org). Click on "Education/South Suburban Expo"

Your choice! Pick one program from each of the time slots offered:

9:30 a.m.—10:30 a.m.

(1) **How to Select a Property Manager**—What are the differences and reasons for choosing between self-management and professional management? Associations need to establish a job description and set up criteria to measure experience, knowledge, and ethical practices. Selecting management candidates, requesting proposals and scheduling interviews with the board are some of the other many details to be covered. *Speakers: Keith Conrad of MC Property Management and Dawn Moody of Keough and Moody*

(2) **Managing Your Association's Finances**- There is no secret to baking a perfect cake or to protecting association assets. Learn and follow the basic ingredients on how to handle assessments, select banking and investment options, and how to protect your funds. This session will describe bank products, capitalization of funds, methods of collecting and depositing funds, who should disburse funds, and recommended authorizations. *Speakers: Tom Skweres of Vanguard Community Management and Frank Coleman of Community Advantage*

Noon—1 p.m.

(1) **Insurance Basics**-Understanding insurance requirements for both your association and owners is necessary to cover your association assets and protect its financial future. This session will cover the requirements included in the Illinois Condominium Property act and your association documents so you can decide whether to select basic or all inclusive coverage. *Speakers: Lara Anderson of Tressler Soderstrom Maloney and Priess and Chuck Hruska of Hruska Insurancenter*

(2) **Developing a Maintenance Schedule**-A good maintenance program requires advanced planning, understanding what projects are seasonal, and knowing when the "white sales" start. A property manager will participate in and oversee a panel including an engineer and a contractor who will itemize the steps and chronology of establishing and following a maintenance schedule for both special and regular projects. Learning how to prioritize projects in this difficult economy is a necessity. *Speakers: Bill Groebe of Groebe Management, Mark Waldman of Waldman Engineering, Mark Youngerman of AAA Painting Co.*

**YES!!** I want to register for the South Suburban Expo on Saturday, March 7, 2009 at the Palos Country Club in Orland Park. Registration fee includes: any of the educational seminars. The Expo Trade Show and "Coffee with the Mayors" is open to the general public at no charge.

Fee Schedule: Member rate: \$10; Non-member rate: \$25 per person; add an additional \$15 per person if registering after Wednesday, March 4. Note: There is no charge to attend the trade show, "Coffee with the Mayors" or to participate in the food drive.

Name of Association: \_\_\_\_\_

Address \_\_\_\_\_ City/Zip: \_\_\_\_\_

Phone #: \_\_\_\_\_ Email Address: \_\_\_\_\_

Name(s) of Individual(s) Attending if different from above) (please print): \_\_\_\_\_

Please make checks payable to ACTHA. Send to: 28 E. Jackson, Suite 910; Chicago, IL 60604 or you may register online using a credit card. Go to [www.actha.org](http://www.actha.org) and click on "Education/South Suburban Expo"

*NOTE: Confirmations are not sent except upon request.*

## “COFFEE WITH THE MAYORS”

Municipal elections are right around the corner not to mention governmental issues that arise and are of interest to community associations. ACTHA has invited Mayors (or their representatives) from the south and southwest suburbs to meet with constituents at the South Suburban Expo on Saturday, March 7 between 9 and noon. \*

\* As ACTHA receives commitments from area Mayors on whether they will attend, we will be posting their names to the web site, as well as the time they will be in attendance. ([www.actha.org](http://www.actha.org))

## LOOKING TO BECOME ACTIVELY INVOLVED IN ACTHA?

Individuals who attend our programs are generally very complimentary of the education we provide. And in a survey conducted last year, those responding rated our newsletter as superior. Getting new association members is always a challenge—so we throw out the gauntlet to YOU!

ACTHA is seeking individuals to serve on its Membership Committee who are interested in growing the organization. If interested, contact [gael@actha.org](mailto:gael@actha.org) or call 312-987-1906

## CONGRATULATIONS!

Attendees at the Fall Conference were asked to complete surveys and be eligible to win various items. As a result, we congratulate the following:

- ⇒ Free “Learn and Lead” tuition: Robert Hicks of Boulevard Pointe CA in Oak Park
- ⇒ Free one-year membership in ACTHA: Dick Meister of 151 N. Kenilworth CA in Oak Park
- ⇒ Free registration to ACTHA’s 2009 Fall Conference: Neil Wellington of 1169 S. Plymouth Ct. CA in Chicago

### *“Question of the Month” continued from page 8*

Though not always handled properly, it is the developer in its role as the “Board” which would have to comply with all statutory and documentary requirements for operation of the condominium association prior to turnover. For instance, since Section 19 of the Act dictates what records the Association must maintain and make available to the unit owners for examination and copying, the developer would have to arrange for compliance with those requirements. If a proper request is made by a unit owner, the remedies of Section 19 would be triggered if access to the records is denied or not granted.

Operations may be a bit murky during the pre-turnover phase of a condominium association. Nonetheless, the law does provide certain benchmarks against which to measure the developer’s performance relative to the administration of the property during that phase. The unit owners are entitled to expect the developer to act in accordance with the law and the governing documents while in control of the operations. The developer’s failure to do so would open the door to unit owner action to compel compliance.

Chuck VanderVennet of the Law Office of Charles T. VanderVennet

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## Question of the Month

**Q.** My building is relatively new (less than two years from the date of the recorded Declaration) and not enough of the 15 units have been sold as to form an association. The developer is taking the role of the property manager. I had asked the developer/property manager for copies of bills and what our building holds in reserves but have not been furnished with this information. What are my rights as an owner in a building that does not have an association?

**A.** A condominium association exists from the moment the Declaration of Condominium Ownership is recorded. Section 18.2(a) of the Illinois Condominium Property Act ("Act") establishes that the "same rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the board of managers by this Act and in the declaration and bylaws shall be held and performed by the developer" until the election of the initial Board of Managers from among the unit owners. Section 18.2(b)(i) of the Act requires that election to occur not later than sixty days after the conveyance by the developer of 75% of the units or three years after the recording of the Declaration, whichever is earlier. That election is part of the "turnover" process.

Before turnover, it is the developer which administers the property. That may be viewed as serving as the "Board" or as the "property manager" overseeing the building's operations. More specifically, the developer should distinguish those roles by hiring a property manager in the same manner as the Board could do so pursuant to Section 18(a)(5) of the Act. That action most likely would be limited by Section 18(a)(16) pertaining to contracts with Board members or related entities.

Continued on page 7