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HOA Industry News, Articles, and Links

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Getting along involves multiple aspects of human nature. The requirements for getting along include a little of each of these—good communication, working together, problem solving skills and most importantly, a good sense of humor.

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### “How Come I Got Sued”

Managers are usually surprised when they get named in a lawsuit. Managers are service providers who work hard to juggle all of the demands placed upon them by the contract, the management company, the board, the homeowners and residents and the visitors to the community. This puts them in a vulnerable position to be sued.

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## Getting Along

By: Craig Huntington

Getting along involves multiple aspects human nature. The requirements for getting along include a little of each of these - *good communication, working together, problem solving skills and most importantly, a good sense of humor.*

### **Good Communication**

As managers and board members you know how critical communication is to accomplishing your objectives. This concern is nothing new to anyone in this field. There has been a drive in the industry to impress upon everyone that there is a big difference between Property Managers and Community Managers. We in the industry are moving toward the term Community Managers, as it more clearly reflects the position that it is the Community that we manage as opposed to the property. Board members alike manage the Community which includes the people and often takes more time than managing the physical property. When CEO's, Presidents and other leaders get together a topic of large concern is the people side of the equation. The physical property and bottom line are important, but are often easier to manage.

Getting along is not as easy as it should be. There are whole industries, seminars, classes, experts, and many books about the subject. It creeps into our daily lives on a personal and professional level. Everyday we misunderstand someone or someone misunderstands us. Part of the reason for this is that we just don't think about communication. It **usually** occurs without any preparation. Since we learned it at a very young age instinctually, we just do it. Statistics from Purdue University Department of Organizational Leadership and Supervision indicate that we only remember:

- 10 percent of what we read
- 20 percent of what we hear
- 30 percent of what we see
- 50 percent of what we see and hear
- 80 percent of what we say
- 90 percent of what we say and do

These numbers indicate how little we retain from our daily lives. The daily lives of many people move so fast that there is little time for reflection or forethought. Technology has catapulted us into a world where silence truly is golden and almost extinct. Where our expectations of instantaneous responses via phone or email set us up for not thinking about what we are communicating and for not listening to what others are communicating to us. So technology helps us get answers faster and communicate more often, but what happens to the quality of the communication?

A lack of quality in communication results in misunderstandings and damages relationships. Think about your best relationships and notice how well you communicate with the people in those relationships. Communities are all about relationships, as you all know. The business of running your Communities is about good communication. In order for things to hum along with fewer bumps good communication is necessary. It needs to be *honest, open, respectful and sincere.* The content rarely matters as much as the manner in which it is delivered. Communication requires a sender and a receiver. The context and frame of reference on the senders' side and the receivers' side affect what message will be conveyed. The saying "it's not what you say but how you say it" stands true in communication.

**Karen Bennett**  
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## Getting Along—Cont.

The message that we think we deliver may not have been received. The ways in which this happens have to do with how the deliverer is feeling at the moment. The tone, pitch and volume of the voice of the deliverer affect what message is received. Facial expressions and body movements are interpreted by the receiver and affect the interpretation of any and all messages. The time and place (context) of the communication affect whether or no the message you sent is the one that is received. The receiver's current state of mind and body affect what will be received. Conversational styles and background affect daily communication. Taking all this into consideration requires thought and effort.

Once these things are considered one realizes that; adjusting how you say the same thing to different groups, will only result in better success in communicating. Your relationship with them will also affect how you deliver the message. It is never the message we deliver, its how we deliver the messages, the sort of relationship we have to the receiver, and who we are that matters. We need to deliver the same message in different ways according to our audience.

### *Working Together*

The industry we work in is relatively small and close knit. The six degrees of separation and/or most often, less than six degrees of separation, apply here. We all have the same problems and can help each other through them, but still remain friendly competitors. As mentioned earlier *honesty, openness respectfulness and sincerity* when dealing with each other will result in good communication and better business relationships. How we treat others will result in how they treat us. The saying what goes around comes around definitely applies in this industry where we never know when an association will decide to change vendors. The thing to remember is that there will be another association around the corner to take its place.

Linguistics determines others physical and emotional responses. It is very important how we frame a comment or question as this often determines the response we will receive. Always try to use good words and stay away from bad words.

### *Problem Solving Skills*

What do managers and board members do every day? Solve problems. This makes managers very busy people. Managers tend to juggle many tasks at the same time out of necessity. Community volunteers are the same way in that those of you who volunteer for this task typically volunteer on more than one board or committee. The saying that 80% of the work is completed by 20% of the people applies in Community work. Nobody works in a bubble by themselves. This causes everyone to need to become self-aware. How we fit into the picture affects how we should communicate to each group. Everyone is different with different needs; being aware of that will greatly improve our chances for success.

Your needs are important in considering getting along. Not being able to control how you communicate will result in a potential lack of communication. Miscommunication may result in not getting along. Everyone needs balance. Balance in your life will result in a balanced approach to resolution. Problem solving from a level head will result in a more rational perspective.

Consider the impact of your approach. Are you sending a message that will be received the way you want to attain your desired result? It is not an unknown fact that the number one fear is public speaking. This is likely due to our lack of successful experiences in communicating one-on-one. Focusing on the message and how you communicate with self awareness and self control will bring you the successes you desire.

Some other resources regarding Getting Along

Dealing with People you Can't Stand – by Dr. Rick Brinkman and Dr. Rick Kirschner

That's not What I Meant by Deborah Tannen, PH. D.

How to Disagree without Being Disagreeable by Suzette Haden Elgin, PH. D.

Craig Huntington

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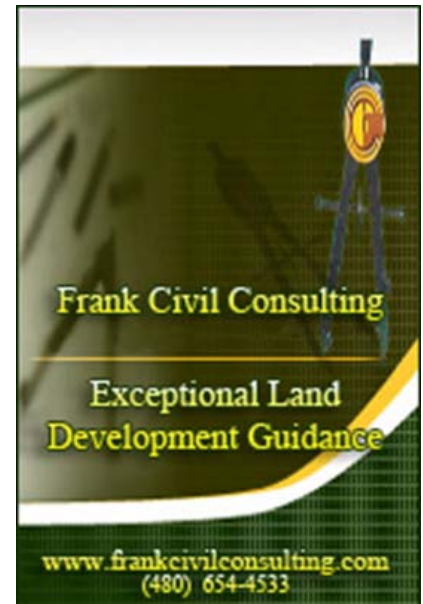


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# Should Painting Be Included In The Reserve Study?

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By: Gary Porter, RS, PRA

The question of including painting in reserves continues to arise, even 15 years after the matter should have been settled. To understand why, you need to know that this issue first arose from tax considerations, not because of any budget, maintenance, or economic factors.

Painting is one of the largest expenditures that most condominium associations will incur. The primary purpose for establishing reserves is to assure funding is available for major repairs and replacements that do not occur on an annual basis. Consequently it is logical that it should be included in reserves because it is not an annual maintenance expense. For most associations painting will occur every 7 to 15 years.

The tax issues causing this perceived problem arose in 1993 when the IRS audited approximately 15 associations in San Diego, California. IRS proposed to add back as taxable income all the painting reserve assessments that had been excluded from income in calculating taxable income on the Form 1120 tax returns. This created a national furor within the HOA industry on the concept of the inclusion of painting in reserves, but only because of the misunderstanding that occurred related to this issue. The difference lies in definitions and perceptions, not in any differences of facts.

## HOA Industry Positions

These are general statements only, and like all general statements, there will always be exceptions.

1. The HOA industry has generally always considered reserves as “capital contributions” for tax purposes
2. The HOA industry has generally excluded reserve assessments from taxable income for tax purposes. If the association is filing Form 1120, this is a major factor in eliminating taxable MEMBER income.
3. Many tax preparers recommend Form 1120 so that the association can take advantage of the lower 15% tax rates of Form 1120, versus the 30% tax rates of Form 1120-H

It is also necessary to state certain tax facts

1. Form 1120 carries a 15% tax rate for the first \$50,000 of taxable income
2. Form 1120 requires the association to delineate between capital and noncapital transactions
3. Form 1120 requires noncapital transactions to be separated between member and nonmember activities
4. Form 1120 considers all nonmember activities to be taxable
5. Form 1120 considers member activities to be taxable only if there is a net member income
6. Form 1120-H does not tax ANY exempt function activities
7. Form 1120-H taxes all nonexempt function activities at a flat 30% tax rate

It is important to note that member activities on Form 1120 are generally similar to exempt function activities on Form 1120-H, but with critical differences that can affect certain tax returns.

## IRS Positions

1. The IRS has its own rules
2. The IRS doesn't care what the HOA industry thinks
3. Internal Revenue Code (IRC) Section 277 requires separation of member and nonmember activities on Form 1120
4. IRC Section 263 defines capital activities – painting is not considered a capital activity (in most circumstances)
5. IRC Section 118 (with numerous interpretations in Rulings and Tax Court cases) defines contributions to the capital of a corporation
6. Revenue Ruling 75-370 specifically states that painting does not qualify as a capital activity that may be excluded from the income of a homeowners association as a contribution to capital. Painting is considered to be a non annual maintenance expense.



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The crux of the issue is that the HOA industry refers to expenditures as being either operating or reserve in nature, and considers all reserves to be “capital” expenditures. The IRS refers to expenditures as being either noncapital or capital in nature. These two definitions are not the same, and the major area of difference is painting expense.

The simplest way to look at this is to realize that painting is simply a noncapital reserve component. OK. So now what?

Let me state for the record that I, as a reserve preparer, am of the opinion that the components to be included in any reserve study should be determined by the maintenance plan, budget policies, and economic considerations. Tax considerations should NOT be a determining factor in what components are included in a reserve study.

Certain conclusions can be drawn from the above discussion of tax issues related to painting as a reserve component.

- It's acceptable to include painting in the reserve study
- Painting reserve assessments cause potential tax issues on Form 1120
- Careful tax planning can allow you to minimize tax risks of painting reserve assessments on Form 1120
- Painting reserve assessments cause NO potential tax issues on Form 1120-H

Gary Porter, RS, PRA

Gary Porter is the President of Facilities Advisors, Inc., a company that provides reserve study services nationwide. He is also a CPA, familiar with the tax issues related to the HOA industry

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# “How Come I Got Sued?”

By: Karen Bennett, PCAM, CCAM

Managers are usually surprised when they get named in a lawsuit. Managers are service providers who work hard to juggle all of the demands placed upon them by the contract, the management company, the board, the homeowners and residents and the visitors to the community.

Lawsuits naming managers usually involves a lack of communication or an action that results in someone getting hurt, being inconvenienced or losing money. Managers are intimately tied to the decisions made by their boards. The manager may advise the board that making a decision one way or the other might result in litigation. The manager may strongly suggest that the association seek and take the advice of counsel. But, the board that feels strongly that their decision is correct and justified even with the warnings by management, may proceed and ultimately involve the association and management in a lawsuit.

## A Case involving a Management Company

A recent case that I testified in, involved the owner of a condominium suing the board and the management company for repairs that were not completed properly. The owner contended that the repairs were not made according to the association expert’s recommendations and that the unit was uninhabitable. The board had taken two years to make the repairs and the management company was included in the lawsuit because the management company did nothing to resolve the issue, in the eyes of the owner. The management company was seen as helping to cause the delays and allowing sub-standard work to be performed.

As an Expert Witness, I was called in by the insurance company representing the association and management company to review the association records and minutes and testify as to their good business judgment and use of reasonable care in making their decisions.

I was able to follow the progress of the initial report of problems, the research and the repair recommendation. The management company had kept excellent records. The board however, had decided to not repair the unit according to the expert’s recommendations. The board had decided to repair the unit by using the association handyman. The repair was not up to code and the repairs were not sufficient to stop the initial complaint, water intrusion.

The board’s decision to hire the handyman to repair the unit was not documented in the minutes. The reasons that the board accepted this repair choice was not explained to the unit owner or recorded in the minutes. The manager was told of the board’s decision outside of a meeting and the decision was never formalized or explained.

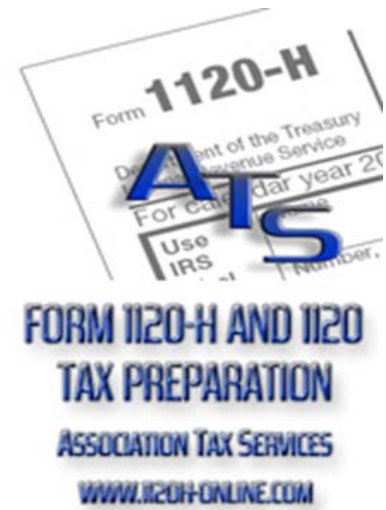
The manager was not a part of the decision to give the job to the handyman and when confronted with the information, chose to accept the board’s decision by not pursuing the issue with the board or mentioning it to his management company.

The issue escalated into a lawsuit when the owners recognized that the repairs did not match the repair recommendations. The management company had done nothing to help get the repairs made correctly and the unit was not repaired. The board was told of the owner’s threat to go to an attorney but the board chose to stand by their original decision and possibly try additional remedies as suggested by the handyman.

This matter was eventually settled out of court and the owners had their unit repaired properly. The association’s insurance company settled the lawsuit and paid all attorney’s fees.



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This case is probably a simple one by most standards. The manager could have strongly urged the board to reconsider their decision on not following the expert’s guidelines. The manager could have documented this recommendation. The manager should have notified the management company that this issue was being decided and could have consequences to the management company. Hopefully, the manager’s superiors would have stepped in and helped to resolve the issue. If the board still chose to proceed and it was against the best judgment of the management company, the management company could have canceled their contract with the association. Irresponsible acts by a board that does not rely on the professional manager or management company deserves to stand alone in their decision.

### Types of Claims made against Managers

Managers can be sued for appearing to side with the board and not rely on good business judgment.

Managers can be sued if they authorize the release of association funds before all contractual terms are met i.e. lien releases are received, progress is made, quality is assured.

Managers can be sued because poor management is seen as a reason that the association buildings or common area is not repaired and is deteriorating.

Managers can be sued if it appears that association funds are missing due to the manager’s negligence.

As we all know, anyone can sue anyone so this list could be much longer. I have listed claims that are common in the industry.

### What you can do about reducing your liability as a manager:

You can insist on being well trained before you are assigned a project to manage.

You can rely on your association attorney to help you guide the board.

You can involve your supervisor in issues that you think might become troublesome.

You can document incidents or issues that you have an indication might result in litigation.

You can conduct yourself like a professional. Expect to be considered and consulted. Be prepared to make recommendations and pro-actively seek out solutions to issues that might someday become problems.

Community Managers are professionals that are given a great deal of responsibility with few industry guidelines and restrictions. Becoming a manager today involves a big commitment to continuing education. Managers are at risk in being named in lawsuits so they need to be especially personally vigilant in protecting their professional careers. Managers need to be alert and responsive to the continuously changing communities that they manage.

Karen Bennett, PCAM®, CCAM®

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Article Title	Article Summary	State
<a href="#">Residents, aldermen clash over snow removal, street care</a>	Homeowners argue with the City Council over the upkeep of streets.	Illinois
<a href="#">Project to House Homeless Veterans Causing Concern</a>	Local HOA concerned about the plans to build apartments for homeless veterans.	Nebraska
<a href="#">Dam demolition plan divides community</a>	Emotional debate occurs over the removal of a century-old dam	Virginia
<a href="#">Clinton Twp. Spends \$52,000 on Grayrock Estates detention basin problem, and the meter is still running</a>	The dispute over a detention basin, in a local subdivision, is still not resolved.	New Jersey
<a href="#">Dania Beach homeowners ready to stop fighting airport expansion and move out</a>	After a 30 year battle to keep commercial jet-liners from the local airstrip, homeowners give up when they learn their neighborhood cannot be saved from the air traffic and noise.	Florida
<a href="#">Lafayette day cares win lawsuit to stay in Benjamin Crossing</a>	HOA fights to shut down two state-licensed day care centers and loses.	Indiana
<a href="#">Phoenix church gets controversial cell tower approved</a>	Church gets cellular tower approved but local HOA not happy	Arizona
<a href="#">HOA Adviser: Is it legal to offer a raffle gift?</a>	Raffle gifts as incentive to get residents to vote and inspector of elections are addressed	California
<a href="#">Committee unanimously approves Rep. Megna's Bill</a>	The Insurance and Real Estate Committee has aproved legislation that would remove any unhealthy influence on the democratic process of the COA by management	Connecticut
<a href="#">Tampa Condo Group Sues Insurer for Repairs</a>	Condo Association is suing Lloyd's of London for nearly \$4 million in repairs	Florida
<a href="#">Certain Documents Must be Provided Free of Charge</a>	Forms and documentation for owners and prospective purchasers, should be provided free of charge	Florida
<a href="#">Woman arrested for Green Countrie thefts</a>	Woman has been arrested for the theft of more than \$67,000 from Greene Countrie Village HOA	Pennsylvania
<a href="#">Town Settles Landscaping Lawsuit</a>	Lawsuit between Property Owners Association and City of Gardnerville settles.	Nevada

<b>Article Title</b>	<b>Article Summary</b>	<b>State</b>
<a href="#"><u>Homeowners are the Association</u></a>	Good communication keeps homeowners and their board on the same page	California
<a href="#"><u>HOA Finds New Solution for Dog-Waste Disposal</u></a>	HOA hires private company to remove dog waste from their maintenance facility	Arizona
<a href="#"><u>Homeowner associations step up foreclosure filings</u></a>	Many associations are foreclosing on owners who are behind in their fees, then renting the units to bring in cash	Florida
<a href="#"><u>Foxenwood intersection stop signs removed for safety reasons</u></a>	Community removes stop signs and reconfigures traffic at intersection for safety reasons.	California
<a href="#"><u>Connecticut Condo Owners Coalition supports proposed legislation</u></a>	A grassroots organization has been formed to address the issues facing the owners of common interest properties in Connecticut	Connecticut
<a href="#"><u>Legislature needs to find 'balance' in HOA issues</u></a>	Covenants and communication are discussed	Nevada
<a href="#"><u>Mad Money: Residents Protest Excessive Fines from Homeowner Associations</u></a>	Homeowners are tired of being charged excessive fines for minor offenses and are considered abuses of power	Nevada
<a href="#"><u>District judge lets lawsuit by collection agencies over HOA fees proceed</u></a>	Judge denies a motion from a state agency to delay proceedings in a lawsuit that collection agencies filed against the Financial Institutions Division	Nevada
<a href="#"><u>Condo owner being forced to remove Virgin Mary statue</u></a>	Couple has had a statue of Virgin Mary in their front yard for decade and recently received notice to remove it.	West Virginia
<a href="#"><u>Fourth Ave. NE Condo Plan Ruffles Its St. Petersburg Neighbors</u></a>	Current residents are fighting a developers plan to build another condo building that would block their views and sunlight	Florida