

Community Association Management *Insider*[®]

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FEATURE

Five Tips for a 'Greener' Association

High energy costs and environmental concerns aren't the only reasons community associations should undertake energy-saving measures. Already, various state legislatures have taken steps to spur associations in a "greener" direction.

Some states have passed laws making it easier for members to use more energy-saving devices. For example, Florida, Hawaii, and Utah have laws that specifically safeguard clothesline-drying rights. And states such as Nevada and Alaska don't allow associations to prohibit solar panels and other power generators.

Last year, the North Carolina legislature enacted a law designed to encourage the use of solar panels and to discourage associations from making the installation of solar technologies so costly as to discourage members from using alternate energy sources.

Associations can implement many practices aimed at reducing and managing energy consumption efficiently. With the help of some green experts, we'll give you five tips for saving resources and money.

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BEST PRACTICES

Getting Help for Isolated Elderly Members

In your condominium community, you may have elderly members. Although many elderly members are capable of living independently, sooner or later you may have an elderly member who has trouble coping with day-to-day concerns, such as managing money or keeping his unit tidy.

An elderly member who has trouble coping may neglect normal upkeep in his unit. He may eventually stop cleaning, let his bathtub overflow, or leave the gas range on—putting himself, other members, and your condominium building at risk.

Before an elderly member's situation becomes serious, there are signs that should cause an association or building staff to pay more attention to the member. We will give you seven signs or triggers, provided by Bob Stevens, director of training at New York City's Department for the Aging, that indicate that your elderly member may need help and that an appropriate social service agency should be notified.

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Isolated Elderly Members (continued from p. 1)

Seven Potential Warning Signals

If a mishap occurs that affects the safety of other members or the condition of the building—such as an elderly member's overflowing sink—you would probably talk to the member and ask him to be more careful. But you can act promptly, before other members are put at risk, if you are aware of the following signs or triggers:

Repeated questions. An elderly member may ask a staff member several times a day whether the mail has come in yet. This may possibly be a sign of dementia or it may just mean that the member is lonely. If a member asks repeated questions, monitor the situation for other signs or triggers.

Wandering. You may find your member wandering around your building. It is common for a person with dementia to wander and become lost, and many do, repeatedly. In fact, over 60 percent of those with dementia will wander at some point.

Inappropriate dressing. This could be dressing in heavy gloves and an overcoat in 90 degree weather or going outside without shoes when it's snowing. Associated with this is any uncharacteristic action or deterioration of personal habits, such as infrequent bathing and shampooing.

Repeated requests. An elderly member may make repeated calls for things she no longer can do, such as opening jars. This is an indication of physical frailty or arthritis, and means that nobody else is around to help and additional assistance may be needed for the member at home.

Substance abuse. A member may ask your staff to buy him alcohol, or may slur, which may indicate a substance abuse problem, or it may mean that he is overmedicated. Overdosing on medication may indicate confusion, forgetfulness, or a misunderstanding of a doctor's instructions.

Compulsive hoarding. Compulsive hoarding was once categorized as an obsessive-compulsive disorder. But recent studies are showing that it is a mental illness of its own. Building staff usually become aware of hoarding behavior through maintenance visits or complaints from neighbors about smells or pests originating in the member's apartment. Hoarding can be dangerous for the member if one of his collected items were to fall on him.

Frequent visits from strangers. Frequent unrelated visitors may indicate the possibility of exploitation. Elderly members may start to bring unrelated individuals into their homes because the members are lonely or confused, and these people may be exploiting them financially. These strangers may start walking off with the elderly member's personal property, such as paintings or other valuables.

How to Find Help

Fortunately, there are local and state agencies that assist elderly members. These agencies provide services directly to members to help them care for themselves. The agencies can provide access to home-delivered meals, home-care attendants, chore services, and other in-home supportive services for seniors who need help.

Programs are available, regardless of income, to those who are mentally or physically impaired and unable to carry out daily chores or protect themselves from neglect without assistance, and who have no one available to assist them responsibly.

Some agencies can also petition for guardians *ad litem*—that is, guardians who represent the interests of a person in a single action in a lawsuit—for people who need help in ensuring their own safety or the safety of their property. In some cases, the state agency or a family member or neighbor can seek to have a permanent guardian appointed if the senior is incapable of managing day-to-day concerns.

If the member is better able to care for himself and his unit with the

help of these agencies, your building will benefit, too. Your search for agencies can start with the Eldercare Locator, a public service of the U.S. Administration on Aging. It can be used to find resources for elderly members in any community.

The Eldercare Locator can be reached by phone at 1-800-677-1116, and you can call any time, Monday through Friday, 9 a.m. to 8 p.m. (EST). You can also visit www.eldercare.gov for more information.

What to Say

Here are some tips on what to say when you call one of the agencies provided by the Eldercare Locator:

Describe danger to member, not to your building. Social services are

interested in the welfare of the elderly member; they are not interested in your building. When you call an agency, describe the danger the member poses to himself, not the danger he poses to your building. For example, a member who leaves gas jets on may asphyxiate himself or die in a fire.

Let agency decide how to help. Do not try to diagnose the member's problem or tell the agency what kind of help is needed. You may think he needs to be in a hospital, but you should stick with the facts—for example, the member leaves faucets running and gas jets turned on. Let the agency decide what help is called for.

Insider Source

Bob Stevens: Director of Training, NYC Dept. for the Aging, 2 Lafayette St., New York, NY 10007; www.nyc.gov/html/dfta.

Greener Association (continued from p. 1)

Tip #1: Replace Routine Paper Mailings

Reducing paper is probably the most easily implemented and effective change that an association can make. Sustainability consultant Alex Szabo recommends communicating by email whenever possible and keeping an updated community Web site.

Associations should consider replacing routine paper mailings with email communications, or establishing areas on a community's Web site for meeting notices and minutes, copies of budgets and financials, work orders, and so on. Even payment coupons can be made accessible in this site area. Providing members with a means to access such relevant information via a Web site or an email is beneficial to the environment and may save an association thousands of dollars.

However, managers can also influence association decisions about the common areas, and lead members by example in modifying the property to be more eco-friendly. Elicit bids from only green service providers; encourage the practice of xeriscaping; enforce your association's recycling policy; install fluorescent or LED lights; use motion sensory lights in clubhouses, management offices, and recreation courts; and perhaps even set aside an area of common ground for composting.

Tip #2: Adopt Xeriscape Techniques

The goal of xeriscaping is to create an attractive landscape that uses plant and horticulture techniques selected for their water efficiency, says Elizabeth Gardener, manager of water conservation for Denver Water,

a Colorado public water utility. The common misconception is that xeriscaping consists exclusively of cactus plants and rocks.

Most xeriscape designs are more concerned with proper irrigation and water-use reduction than with eliminating water use altogether. Xeriscape design uses a mix of low-water-use plants with a few carefully chosen areas of irrigation. Therefore, rather than having expansive grassy lawns everywhere, your community should consider having grass only in smaller, appropriate areas, such as where you want children to be able to play.

If you're interested in xeriscaping possibilities, you should consult a landscape design consultant for ways to xeriscape your existing landscape plan into an earth- and flora-friendly

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Greener Association

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environment that will help conserve a precious resource. You will reduce your maintenance and water costs, and help preserve the environment at the same time.

Tip #3: Conduct Professional Energy Audit

With the help of a qualified professional, a thorough energy audit may identify additional ways to save energy and money for your association. A professional energy auditor can examine your building from top to bottom and provide a list of energy-trimming measures, along with the cost and potential savings from each one.

A major source of energy inefficiency for many buildings is a leaky building envelope. Auditors have two basic ways of assessing a building's envelope. Many use a "blower door," a giant fan placed in the front door to draw out air and create negative pressure in the home. They then walk around the building with smoke sticks to locate the spots near windows, doors, electrical outlets, and trim, where smoke blows sideways, indicating that air is seeping in.

The other method is to use an infrared camera, which is less cumbersome and provides an instant graphic image of leaks. The camera shows a range of hues indicating different temperatures that may be a sign of air seeping under doors, or other leaks. The auditor may recommend weather stripping around doors and windowsills, or caulk in some areas, that will trap heat or cool air in the building and reduce the energy required to heat or cool the building.

Tip #4: Clean or Upgrade Existing Heating Equipment

Winter is approaching, and increasing energy rates for both natural gas and electricity may motivate your association to give its equipment a second look, especially if it has its own central heating equipment. Leaks, noninsulated piping, dirt buildup, inoperable controls, and other overlooked maintenance basics can translate to added energy costs and undermine an association's efforts to become greener.

Energy consumption for a condominium building with central heating varies depending on the type and condition of the heating equipment and the energy weaknesses inherent in the building. Before heating season starts, hire a qualified boiler service technician to perform a yearly service inspection when the boilers are turned back on, recommends Mark Good, president of boiler service company P.C. McKenzie Company. This way, any needed repairs or fine tuning can be made without any disruption to your members.

Good also recommends cleaning a building's boiler. The byproducts of burning fuel oil are soot and ash, which need to be cleaned from surfaces to maintain proper heat-transfer efficiency. A layer of soot and ash can reduce efficiency by 10 percent. And letting that buildup continue for just five years can result in a 15 percent to 20 percent loss of a boiler's efficiency.

A maintenance engineer or third-party professional can also tell you whether you need to replace or upgrade electrical or gas equipment. Upgrading an older system to a more energy-efficient model may pay for itself in less time than you think, because of increasing energy costs.

Newer, more efficient boilers may use the heat normally released through the exhaust or flue of a traditional boiler to pre-heat the water, achieving the same result with less work. These are called condensing boilers and are rated by the industry to be above 90 percent efficient.

Tip #5: Specify Preferred Locations for Solar Energy Devices

The state laws governing solar energy devices, such as solar panels and retractable window awnings or other energy-reducing shade structures, allow reasonable restrictions to be placed on them. These restrictions may include limits on the dimensions, placement, and external appearances of the devices. However, the laws provide that an association can neither prevent the installation of a solar energy device nor significantly increase the cost of installation or use of solar energy devices.

In states that are silent regarding solar energy devices, progressive associations may want to actively establish guidelines regarding the placement or aesthetic parameters of these energy devices before the state disallows prohibitions on solar panels. Beyond guidelines, an association may even want to establish a partnership with a local solar energy device company and negotiate lower costs to members for installing acceptable devices in preferred locations on a member's property.

Insider Sources

Elizabeth Gardener: Director of Conservation, 1600 W. 12th Ave., Denver, CO 80204; www.denverwater.org.

Mark Good: President, P.C. McKenzie Company, 1365 McLaughlin Run Rd., Pittsburgh, PA 15241; www.mckenziecorp.com.

Alex Szabo: President, TheGreenOffice.com, 65 Capp St., San Francisco, CA 94103; www.thegreenoffice.com.

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RECENT COURT RULINGS

► Member Can Build Shed on Property

Facts: An association member constructed a shed on his property. The shed was approved by the town's building inspector and received a certificate of compliance. The association sent the member a notice stating that the shed violated certain provisions of the governing documents. The member sued the association, claiming that the board lacked the authority to issue him a violation notice.

Ruling: A New York court ruled for the member.

Reasoning: The court found that the relevant governing documents did not give the board the authority to regulate the type or shape of the shed erected on a member's property. The association could only regulate a shed's condition.

■ Cababe v. Estates at Brookview Homeowner's Assn., Inc., June 2008

► Governing Documents Allow Assessments for Legal Fees

Facts: A member submitted a building plan to the association's architectural review committee. The committee denied approval of the building plan because it did not comply with the setback requirements. After numerous attempts to amend the community's setback requirements, the member filed a discrimination claim, alleging that the association had discriminated against him on the basis of his race. The association hired a defense attorney, incurring \$4,331.99 in legal bills.

At a meeting to increase the annual assessment to cover the legal bills, the member told the association that he did not wish to support it financially in defending itself. As a result, the member did not pay the full assessment. The association sued the member to recover the assessment. A trial court awarded the association the full amount of the assessment.

The member appealed, arguing that the association's governing documents were too vague to uphold an assessment for attorney's fees. The member argued that because the governing documents didn't specifically list the items for which an assessment may be collected, the association's assessment for attorney's fees was invalid.

Ruling: A North Carolina appeals court ruled for the association.

Reasoning: The court ruled that the governing documents were not too vague. At the time the member purchased property in the community, he should have known that the association may need to defend itself against lawsuits and therefore hire attorneys. Requiring

a reasonable assessment to pay legal fees promotes the welfare of the community members, as the governing documents intended.

■ Willow Bend Homeowners Assn. v. Robinson, September 2008

► Insurer Must Cover Association's Claim

Facts: A condo association sued an insurer for failing to compensate the association for windstorm damage caused by a hurricane. The association had purchased a commercial residential insurance policy that provided coverage for loss or damage to the condominium building.

The insurer denied a portion of the association's claim for damages to the exterior windows and sliding glass doors of the individual condos. The insurer stated that these items were not the insurance responsibility of the association under the condominium's governing documents, and therefore their claim was outside the coverage of the policy.

Ruling: A Florida district court granted a judgment without a trial, in favor of the association.

Reasoning: The court noted that in the governing documents, the exterior glass windows and sliding glass doors were not specifically mentioned in the list of items excepted from the community's insurance obligations. These items are also not listed in the insurance obligation exceptions of the association under Florida state law.

Therefore, reading the governing documents as a whole, the court ruled that the exterior glass windows and sliding glass doors fall within the coverage provided by the insurance policy.

■ Mayfair House Assn. v. QBE Ins. Corp., August 2008

► Association Can Amend Governing Documents

Facts: Worried about short-term rentals in the community, an association's board decided to amend the governing documents to restrict rentals to 30 days or more. The board sent out ballots, and 132 of the 168 ballots were returned. The proposed amendment failed because 36 owners abstained from voting, and of those who voted, the amendment received only 59 percent of the vote.

The association then petitioned a court for a reduction in the percentage of affirmative votes required to amend the governing documents, as California state law allows. The court granted the petition. A member appealed the court's decision.

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Recent Court Rulings (continued from p. 5)

Ruling: A California appeals court upheld the lower court's order.

Reasoning: The court ruled that the association showed that the proposed amendment was reasonable. The association argued that the need to restrict rentals to 30 days or more was to ensure that the property would not become akin to a hotel. The lower court had noted that such restrictions are common.

Also, the appeals court ruled that the amendment is not arbitrary. It applies to all members who rent their homes, and any burden to enforce the minimum lease term is outweighed by its beneficial value in preserving the residential character of the community.

■ Mission Shores Assn. v. Pheil, September 2008

► Developer May Be Liable for Community Defects

Facts: An association sued the builder of the condominium building for breaching its implied warranty of habitability—that is, its guarantee that the building is fit to be lived in. The association presented evidence of leaks into the units, inadequately sloped decks, loose railings, improperly installed windows, and other structural problems.

The builder asked the trial court for a judgment without a trial in its favor on the basis that the alleged defects did not involve fundamental foundation or support problems. The builder argued that the problems the association cited are defects in workmanship, but are not a breach of the implied warranty of habitability. The trial court granted the builder's request.

Ruling: A Washington appeals court reversed the lower court's decision.

Reasoning: The court ruled that regardless of whether the builder violated building codes, the construction defects the association cited are allowing water to leak into the building. The association showed that mold infestation is a problem in many of the units. And although the association did not present medical testimony of health problems from the mold, the existence of mold demonstrates that water is getting into the units and is causing property damage.

The appeals court ruled that the association's evidence showed that the construction defects were not trivial problems. Therefore, it is for a jury to decide whether the defects are serious enough to conclude that the builder breached its warranty of habitability.

■ Westlake View Condo. Assn. v. Sixth Ave. View Partners, LLC, August 2008

Q & A

The INSIDER welcomes questions and comments from subscribers. You can 1) email eyoo@vendomegrp.com; 2) send your questions to Eric Yoo, Editor, Vendome Group, LLC, "Q&A," 149 Fifth Ave., 10th Fl., New York, NY 10010-6823; or 3) fax them to (212) 228-1308.

Verifying Member's Military Service for SCRA

Q In some cases, I have heard that the law limits our association's collection rights against members who are serving in the military. If this is true, can you please explain the limitations and how our association can verify whether a defaulting member is indeed serving in the military?

A The Servicemember's Civil Relief Act (SCRA) is the law that affects your association's collection of assessments against a member on long-term active military duty. The law is intended to temporarily suspend judicial proceedings and transactions such as foreclosures and debt collection proceedings that may negatively affect the service members' rights during their military service.

The SCRA's protections begin when a person enters active military service. Members of the military reserve are covered on the date they receive active duty orders.

And the SCRA terminates on the date the service member is released from military service.

Generally, a service member may postpone any pending court proceeding against him. Here are some protections provided by the SCRA:

Liens. At the request of the member in the military or the court on its own, the member may stop an association from filing a lien against the member's home during the period of the member's active duty plus up to 90 days after that duty ends.

Legal representation. When a lawsuit is filed against a member and the court determines that the defendant is on active military duty, the court cannot enter a judgment until after the court appoints an attorney to represent the interests of the service member. The SCRA states that "if an attorney appointed ... to represent a service member

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cannot locate the service member, actions by the attorney in the case shall not waive any defense of the service member or otherwise bind the service member.” In other words, if your member is on active military duty, the trial will not be resolved until the member comes back. Therefore, the best option may be to refrain from filing a lawsuit until his service has ended.

Verifying member’s active military service. If you suspect a defaulting member is in the military, you may want to confirm his military status before pursuing legal action. You may apply to the Department of Defense, which according to law must issue a statement regarding military service. The office to contact for information under the SCRA on whether a person is in the armed forces is:

Defense Manpower Data Center
Attn: Military Verification
1600 Wilson Blvd., Ste. 400
Arlington, VA 22209-2593
Tel: (703) 696-6762 or (703) 696-5790

You can also make SCRA inquiries online at www.dmdc.osd.mil/scra/owa/home. You will need to enter the last name and Social Security number of the individual. The form also asks for a first name, middle initial, and date of birth. If the member is on active duty, the report will show his or her branch of service and beginning date of active duty status.

If the office does not have information as to whether the individual is on active duty, the generated report will list only the supplied last name, first name, and middle initial if supplied, with the text: “Based on the information you have furnished, the DMDC does not possess any information indicating that the individual is currently on active duty.”

If the Social Security number is unavailable, you may request by mail a manual search, using the date of birth of the individual instead of the Social Security number.

■ Servicemember’s Civil Relief Act: 50 USC §501 *et seq.*

COMMUNITY BUILDING

How Your Older Condominium Can Show Environmental Leadership

More and more first-time condo buyers are seeking environmentally friendly features in units and buildings. Many condominium developers are responding by incorporating various environmentally friendly elements into their buildings’ designs.

These may include using non-toxic and recycled materials in the structure of the building, installing low-energy consumption fixtures, and having green roofs. Green roofs are partially or completely covered with vegetation and soil planted over a waterproofing membrane. Unlike conventional black rubber roofs, green roofs can reduce heating and cooling loads on buildings and prevent storm water run-off.

Many new condo buildings are “LEED” certified. LEED, which stands for Leadership in Engineering and Environmental Design, is a rating system developed and admin-

istered by the U.S. Green Building Council (USGBC). The LEED program sets out certain criteria that buildings must meet to be considered environmentally responsible.

Condominium buildings that meet these criteria can get LEED certified, which has several benefits for members. It shows a community’s commitment to protecting the environment. And members in a LEED certified building enjoy reduced energy costs, which increases the value and marketability of the units in the community.

A common misconception is that LEED certification applies only to new developments. But a special LEED program for existing buildings, called the LEED-EB program, provides a list of steps that managers and condo associations can take to operate and manage their building more efficiently.

“With an existing building, you have to make the most of what you’ve got,” says Doug Gatlin, the vice president for market development at the USGBC. “We recognized that most buildings are not going to go through a gut rehab,” he says, adding that building managers can take basic actions to greatly improve a building’s energy efficiency and effect on the environment.

This year, the USGBC released a new reference guide that provides ways for existing buildings to become certified without requiring owners to undertake major building rehabilitation. We’ll tell you more about the LEED program in general and how to become certified.

LEED Program Basics

The LEED program sets out certain standards that buildings must meet

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Environmental Leadership

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to be considered environmentally responsible. These standards were developed with input from experts in the industry. Buildings that want to participate can make improvements in six categories:

- “Sustainable sites”—that is, how well the building and its property are designed to protect or minimize the building’s impact on the surrounding environment;

- Water efficiency;
- Energy and atmosphere;
- Materials and resources;
- Indoor air quality; and

- Innovations in Operations—a catchall category that can include improvements not covered in the regulations.

Buildings earn points toward certification by making improvements in the six categories. Depending on the total number of points a building earns, it can be certified at one of four levels: certified, silver, gold, or platinum. The higher the certification level, the greener the building—and the more the building will save on energy costs and other operating expenses.

Most of the categories above include required improvements such as meeting a minimum water-efficiency standard. But under each heading are also optional ways to earn points. For example, buildings can get points for installing solar panels or purchasing solar-power credits.

Other ways of gaining credits include having written environmental-saving policies. If the association implements a policy stating that it will use only green contractors, it can earn a point toward a LEED designation.

Benefits of Certification

Among the benefits of making your building greener, LEED-EB certification:

- Reduces your building’s energy usage and thus its impact on the environment;
- Increases home values by reducing the community’s operating costs;
- Improves your building’s indoor air quality, which may improve or protect members’ health;
- Makes your building more marketable to prospective tenants because lower energy costs will mean lower operating expenses;
- Demonstrates your community’s leadership in helping to protect the environment; and
- May qualify your community for tax rebates and other local government incentives.

How to Get Building LEED-EB Certified

To get your building LEED-EB certified, you must go through a four-step process.

Step #1: Register building.

First, you’ll need to register your building with the USGBC, which you can do on its Web site, www.usgbc.org. When you register, you will be asked to provide basic information about your building, such as the type and size of the building, the date of construction, and other data. Once the building is registered, you will get access to resources—such as software tools, letter templates, and checklists—that explain and facilitate the application process.

Step #2: Document credits your building has earned. Once the building is registered, you will need to document the credits you believe your building has earned. Examples of earned credits include pest management methods, water-efficient

landscaping, nontoxic cleaning practices, and adopting a sustainable purchasing policy. The documentation you will have to submit will depend on the particular credits you think your building has earned.

Step #3: Prepare and submit application online. You have to prepare and submit an application to the USGBC online. You are required to use its submittal templates. These templates contain embedded calculators that will immediately notify you of incorrect or incomplete information.

Through the USGBC’s Web site, you can view and submit credit interpretation requests for instances where the reference guide does not sufficiently address a specific issue, and communicate with reviewers throughout the LEED review process.

Step #4: Get final certification review from USGBC. The USGBC will then review your application, which can take a few weeks. If the USGBC needs additional information or has any questions, the review is likely to take longer. If the USGBC rejects your application or you disagree with the level of certification given to your building, you have 30 days to appeal.

If the USGBC approves your application, it will certify your building at one of the four levels. And it will give you a plaque that you can display at your building indicating the level of your building’s certification. To maintain your LEED-EB status, you must file for recertification at least once every five years. The recertification process is easier than the initial certification process because you need only document changes in your building’s policies or performance data since your initial certification.

Insider Source

Doug Gatlin: Vice President, Market Development, U.S. Green Building Council, 1800 Massachusetts Ave. NW, Ste. 300, Washington, DC 20036; www.usgbc.org.

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