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COMMONtary is a free publication intended to provide helpful and relevant information to Eastern Iowa Condominium Association Boards of Directors and Management Professionals. We hope that you will find COMMONtary to be a valuable resource in managing your community or portfolio of communities.

COMMONtary

A NEWSLETTER FOR EASTERN IOWA CONDOMINIUM ASSOCIATIONS AND MANAGEMENT PROFESSIONALS

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COMMONtary is provided for general informational purposes only and should not be construed as rendering specific legal advice to your particular association. Legal principles referred to in COMMONtary are subject to change from time to time. Boards are urged to consult with legal counsel prior to acting on any information contained in COMMONtary.

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ISSUE NO. 5

NOVEMBER 2014

Addressing Concerns Related to Seasonal Displays



The holidays can be a fun and exciting time, but they can also be a stressful time. By following some simple tips (some of which may require revisions to your Rules and Regulations), you can avoid unnecessary stress with respect to seasonal displays in your community.

- 1) Be Inclusive.** Acknowledge that cultural norms differ, and exhibit a healthy respect for diversity.
- 2) Be Responsive.** Ask your members what they want.

Do not lose sight of the notion that what may be a reasonable rule or regulation in one community may be entirely unnecessary in another.

- 3) Be Fair.** Enforce applicable rules and regulations evenhandedly. For example, if affixing decorations to common elements, or placing decorations upon common elements is prohibited (as is likely the case in most communities), be certain you are enforcing

all violations, not only those pertaining to displays the Board finds distasteful.

- 4) Be Timely.** Consider adopting rules for how soon before and how soon after a holiday displays may continue to be exhibited.
- 5) Be Safe.** Ensure residents are not overloading electrical systems and are, for example, utilizing UL-approved devices.

Water Damage: Whose Responsibility Is it Again?

Just this year we have been asked by various clients to provide opinions with respect to who bears the responsibility (as between the association and individual unit owners) for repairing water damage caused by everything from overflowing toilets, to malfunctioning water heaters, to cracked foundations, to leaking windows and doors. Past culprits have included faulty sump pumps, leaking roof vents, and seasonal ice damming. Whatever the cause of water damage itself, the solution is likely to require a multi-faceted ap-



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If you would like to continue receiving *COMMONtary*, but would prefer to receive electronic PDF copies in the future, please e-mail rsiems@lynchdallas.com and indicate your name, the name of your association, and your desire to go green. Want to share *COMMONtary* with the other members of your board or other property managers? No problem. Simply include their names and e-mail addresses as well.

Legislative Update: Use Restrictions in Declarations of Condominium are Perpetual

A nagging question concerning the impact of the State of Iowa's Stale Use Doctrine on older condominium regimes has finally been put to rest by a recent amendment to the State's Horizontal Property Act, which establishes the legal authority for the creation of condominium communities in Iowa (Iowa Code Chapter 499B).

The Doctrine, found in Iowa Code Section 614.24, generally provides that use restrictions on land expire after twenty-one (21) years unless a verified claim is filed with the county recorder within that twenty-one (21) year period.

The doctrine's impact on the State's condominium regimes has long been a subject of debate among those practicing law in the area, with many, including us, taking the position that the perpetual status of condominiums under the Horizontal Property Act exempted condominium regimes from the

operation of the Doctrine. But, with no case law to resolve the question, and the *Chipman's Case*, 814 N.W.2d 622 (Iowa Ct. App. 2012) only confusing matters further, the



recent amendment is welcome.

As of July 1, 2014, and the adoption of Iowa Code Section 499B.21, what we had previously argued to be the case is now irrefutable: owners' associations for older condominium regimes no longer need to wonder whether or not their use restrictions are valid or whether a verified claim must be filed.

We Want to Hear from You



us to consider addressing in an

Do you have a general topic you would like

upcoming issue of *COMMONtary*, or at a free informational seminar tentatively planned for the spring? Email your thoughts or ideas to: sleidinger@lynchdallas.com.

Water Damage

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proach, which is rarely as simple or straightforward as you would probably like. This is because properly assessing and addressing water damage requires not only an assessment of the particular facts and circumstances surrounding the damage itself, but the application of those particular facts and circumstances to various provisions of your organizational documents and governing law.

How, for example, do your documents define the damaged components? Are they common elements or unit components? How many different units/owners are involved? What are the respective parties' maintenance responsibilities pursuant to your organizational documents? Who is responsible for facilitating the repairs and who is responsible for paying for them? What do the documents say about



insurance coverage? Who is responsible for insuring what components? What coverage is required? Is coverage available? Who should bear responsibility for the deductible? Is a construction defect involved? Does the developer or a particular contractor bear any responsibility? Was the damage the result of a particular unit owner's negligence and, if so, what remedies do the documents provide? Does the association have any liability as a result of deferred or negligent maintenance? And if this process is not already complicated enough, you must always remain aware that you are dealing with people's homes, and time is always of the essence.

As no two communities' organizational documents are exactly alike, and as even a single community's documents cannot predict every possible scenario, determining how to properly address water damage can be one of the most frustrating tasks a volunteer board can be called upon to address. Considering the need for a case-by-case analysis, the likelihood that a review of your organizational documents will raise more questions than it answers, and the number of opportunities you have to make a costly misstep, any association would be well-served to seek the advice of legal counsel when faced with cleaning up in the wake of water damage.

About the Author



Steve Leidinger is an attorney with Lynch Dallas, P.C., in Cedar Rapids, Iowa, with a general practice, which includes representing condominium and other homeowners' associations.

Steve has served as general and special counsel to owners' associa-

tions since 2006. During this time, he has represented associations on a host of matters, including collections, enforcement, document amendment and interpretation, litigation, operational issues, corporate governance, and others.

He also has years of experience drafting condominium documents for both residential and commercial developers.

Steve would welcome the opportunity to meet with your board to discuss the possibility of representing your association, whether as general counsel or as special counsel with respect to a specific project or matter.

Lynch Dallas, P.C. provides services to condominium and homeowners' associations at competitive hourly rates.