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WWW.LYNCHDALLAS.COM  
319.365.9101

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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If you missed the inaugural issue of COMMONtary in January 2013, a PDF copy is available on Steve Leidinger's attorney profile page on Lynch Dallas' website.

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CEDAR RAPIDS, IA 52406-2457

PO. BOX 2457

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# COMMONtary

A NEWSLETTER FOR EASTERN IOWA CONDOMINIUM ASSOCIATIONS AND MANAGEMENT PROFESSIONALS

ISSUE NO. 2

APRIL 2013

## Spring Cleanup: Three Things to Consider When Using Volunteer Labor

For owners' associations, spring is a time of year ripe for community projects. After a long Iowa winter there is certainly plenty to be done in your community. The urge for boards to utilize community volunteers to tackle these projects can be compelling, particularly in smaller communities. However, boards should not rush to utilize volunteer labor before considering potential consequences.

On one hand, volunteer projects present good opportunities for associations to save money and for neighbors to get to know one another better. On the other hand, they also present something far less welcome: opportunities for liability. What types of things should a board consider before soliciting or accepting volunteer labor from unit owners or occupants?

### **(1) Save Skilled or Dangerous Work for the Professionals.**

Understand that certain projects lend the selves to volun-

teer labor better than others, so consider the task at hand. Skilled labor, for instance, should almost always be reserved for a licensed professional contractor with proof of liability and worker's compensation insurance. In these situations, hiring a contractor transfers the risks for injury and shoddy work and can save an association a great deal of time, money, and heartache in the end.

It is also advisable to save tasks involving heights, heavy lifting, and/or dangerous instruments (e.g., ladders, power tools, dangerous chemicals, etc.) for a professional. Even if a unit owner happens to be a professional contractor, consider that his or her insurance may not cover work performed on a voluntary basis.

### **(2) Check with Your Association's Insurance Agent to Determine whether Volunteers are Covered.**

This is perhaps the easiest step a board can take when considering whether



to accept or solicit volunteer labor. A good insurance agent is a wealth of knowledge and calling to confirm coverage costs the association nothing.

If your association's current policies do not cover volunteers, your agent should be able to tell you whether there is an additional policy or policies that the board could purchase in order to fill any existing gaps in coverage with respect to the use of volunteers.

### **(3) Obtain Signed Liability Waivers.**

Even if your board

See VOLUNTEERS, Page 3

## Butt Out: Establishing Restrictions on Smoking



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In the Spring of 2008, Iowa lawmakers acknowledged the danger posed to the general public by smoking and passed the Iowa Smokefree Air Act. The Act prohibits smoking in almost all public places, including restaurants, bars, office buildings, health care facilities, childcare facilities, and others. The Act does not, however, prohibit smoking in condominiums. This begs the question: can owner's associations restrict smoking within a condominium? The short answer is yes.

Establishing smoking restrictions can, however, be challenging. How, for example, does an association balance the interests of smokers and non-smokers? Should smoking be permitted in certain areas but not others? Should owners and occupants be permitted to smoke in their own units? How do you enforce restrictions on smoking?

These are all reasonable questions. In large part, the answers lie in your governing documents and in the configuration of your particular community.

Restricting outdoor smok-

ing or smoking within a condominium's common areas is an easier question than restricting smoking within units. This can typically be accomplished by a change to an association's rules and regulations, which in most communities requires only an affirmative vote of the association's directors. This is because most declarations give an association's board broad discretion when it comes to regulating a condominium's common elements, particularly with respect to matters concerning the health and welfare of owners, occupants, and their guests and owners' use and enjoyment of their units.

While not technically required, in most instances filing an amendment to your rules and regulations with the Recorder of the county where the condominium is located is advisable in order to put prospective purchasers on notice.

When it comes to restricting smoking within units, however, it is this attorney's opinion that an amendment to a condominium's declaration, requiring an affirmative vote of a particular percent-



age of unit owners, is in most cases a better choice than the board simply adopting a rule or regulation.

The question of whether to even attempt to restrict smoking within units should not be taken lightly. In 2010, approximately 19% of all Americans smoked, according to the CDC, and many consider it their right to smoke within the privacy of their own homes. In communities where smoke can be contained within a unit, restricting smoking within units is likely unnecessary and could be viewed by residents as an invasion of privacy and personal choice.

However, in other communities, particularly those with units in close proximity which share common walls and HVAC ducts, smoke from one unit may be able to freely enter other units and/or common areas. In the latter scenario, one individual's choice to smoke can have a profound

impact on the health of neighbors, particularly children, the elderly, and those with allergies or sensitivities to smoke. Smoke transfer can also impact neighbors' quiet enjoyment of their units and adversely impact resale values.

In these types of situations, an association could find itself subject to liability based on legal theories such as negligence, nuisance, trespass, or breach of quiet enjoyment. This is because associations, by and large, have a duty to enforce the restrictions and rules and regulations of the condominium. Given the difficulty of abating smoke transfer in

some type of communities, an outright restriction on smoking may be an association's only viable option to limit its exposure.

Whether an association votes to amend its declaration or a board elects to amend its rules and regulations to prohibit smoking in certain areas, or entirely, it is a good practice to establish an effective date at some point in the future and to provide owners with ample written notice of the change. Posting no-smoking signs is also advisable.

In any event, for any smoking restriction to be effective swift and certain enforcement is required. Depending upon your organizational documents, this may include warning letters, enforcement assessments or fines, and/or lawsuits seeking injunctive relief (i.e., a court order to cease and desist). Given the number of considerations to address and documents to review, no association should attempt to adopt smoking restrictions without first seeking the assistance of qualified legal counsel.

## Volunteers

Continued from Page 1

and your association's insurance covers volunteers, the board should, nevertheless, consult with legal counsel regard-

determines that a particular project is low-risk

ing the preparation of a liability waiver, or "hold harmless agreement" for the association's use. While a signed waiver will not necessarily protect an association in the event the association itself is in some way negligent, no volunteer should be permitted to begin work on a project before providing the board or

its designees with a signed waiver.

While no volunteer project can be made 100% risk free, following these three steps can help to reduce the chance that a project organized to save your association money will end up costing far more in the end.

## About the Author



Steve Leiding is an attorney with Lynch Dallas, P.C., in Cedar Rapids, Iowa. Steve has served as general counsel to condominium and homeowners' associations since 2006. During this time, he has represented associations on a host of matters, including collections, enforcement, document amendment and interpreta-

tion, 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

### STEVEN C. LEIDINGER

Attorney at Law

LYNCH DALLAS, P.C.

P.O. Box 2457  
526 Second Avenue SE  
Cedar Rapids, IA 52406-2457  
[www.lynchdallas.com](http://www.lynchdallas.com)

Telephone 319.365.9101  
Voicemail Ext. 139  
Facsimile 319.866.9721  
E-mail: [sleidinger@lynchdallas.com](mailto:sleidinger@lynchdallas.com)

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