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# COMMUNITY LIVING

March 2019

## **CAI-SEFL IS COMING TO THE KEYS!**

Watch for details to be announced soon as we bring networking and CEU opportunities to the Florida Keys!

### **In This Issue...**

Drain Cleaning Methods

Assess or Not?

Condo Water Damage...Who Pays?

Florida Fish Kills in Association Lakes

Condo Nuisances...What to Do?

Hurricane Kit Prep

Personal Training in your Clubhouse Gym

THE SOUTHEAST FLORIDA CHAPTER  
**community**  
ASSOCIATIONS INSTITUTE

The Official Publication of the Community Associations Institute - Southeast Florida Chapter







SOUTHEAST FLORIDA CHAPTER  
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Community Associations Institute Southeast Florida  
**2019 Annual Golf Tournament**  
**Friday, April 12<sup>th</sup>**  
**Jacaranda Country Club**  
proudly sponsored by  
**BEST ROOFING**



Support the Chapter and join your friends and colleagues on Friday, April 12<sup>th</sup> to enjoy a day of fun on the fairways. Following the tournament is an awesome dinner and awards ceremony.  
Did we mention raffles? Lots of Raffles!

## PLAYER REGISTRATION

### SCHEDULE

12:00 Noon Registration/Lunch  
1:00 PM Shotgun Start  
5:00 PM Awards Dinner & Raffles

### COST

\$200 per golfer / \$700 per foursome  
Dinners only: \$45 per person  
\$200 includes greens fee, cart, goody bag, dinner



Portions of our proceeds from this year's tournament will be donated to Florida Initiative for Suicide Prevention.

**Tournament Information** Contests for men and women include: Closest to the Pin and Longest Drive. Huge Hole-In-One Prizes!

**After Golf** An awards dinner will wrap up the day's activities. Trophies will be provided to 1<sup>st</sup>, 2<sup>nd</sup> and the team that "Should Have Gone Fishing!"

**The Grand Prize** Golfers will have the opportunity to win exciting prizes including a Grand Raffle Prize!

Primary Contact Person: _____	Golfer 1: _____
Member No.: _____	Golfer 2: _____
Address: _____	Golfer 3: _____
City/State/Zip: _____	Golfer 4: _____
Phone: _____	
Email: _____	

Additional Dinners (\$45 ea.): \$ \_\_\_\_\_

Enclosed is a check in the amount of: \$ \_\_\_\_\_



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### **Reservation/Cancellation Policies:**

Mail registration form with check (payable to CAI-SEFL) to:  
304 Indian Trace, Suite 538, Weston, FL. 33326.  
Cancellations received after Thursday, April 4, 2019 will not be refunded.  
Substitutions are permitted.

**INFORMATION: 954-816-0661 or [ced@cai-seflorida.org](mailto:ced@cai-seflorida.org).  
Visit us online at [caiseffl.org](http://caiseffl.org).**

# community LIVING

March 2019

Volume I, Issue 27

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Jill Proietti

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This publication attempts to provide CAI's membership with information on community association issues. Authors are responsible for developing the logic of their expressed opinions and for the authenticity of all presented facts in articles. CAI does not endorse or approve statements of fact or opinion made in these pages and assumes no responsibility for those statements. This publication is issued with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

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## WHAT IS CAI? Over 40,000 Members and Growing!

Community Associations Institute (CAI) is a national organization dedicated to fostering vibrant, competent, harmonious community associations. For more than 40 years, CAI has been the leader in providing education and resources to the volunteer homeowners who govern community associations and the professionals who support them. Our members include community association volunteer leaders, professional managers, community management firms, and other professionals and companies that provide products and services to associations. Our local chapter serves over 400 members with annual events including Trade Show & Expo, Golf Tournament, CAM & Board Member Education events and so much more.

## READER COMMENTS & ARTICLES ARE WELCOME

Columns and ideas from all our members are always welcome. Send submissions in Microsoft Word format to: ced@cai-seflorida.org

Articles appearing in *Community Living* reflect the author's opinion and not necessarily that of CAI. Acceptance of advertising does not constitute an endorsement of the product or service.

National on the web: [www.caionline.org](http://www.caionline.org)

SE FL Chapter on the web: [www.cai-seflorida.org](http://www.cai-seflorida.org)



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## UPCOMING EVENTS (subject to change)

Mar. 13: **MIAMI NETWORKER MIXER**- Returning to the ever-popular Ball & Chain in Little Havana! CAI CAM Members still FREE!

Mar. 26: **HOT TOPIC-HOT BREAKFAST** \*- Monthly Broward Breakfast Meeting 1-hour CE credit after breakfast. CAI CAM Members eat FREE!

Apr. 12: **GOLF TOURNAMENT** - Jacaranda Golf Club. Proudly sponsored by Best Roofing. Visit [CAI-SEFlorida.org](http://CAI-SEFlorida.org) to sponsor and register.

Apr. 24: **SPONSOR APPRECIATION DINNER**- 6:00pm to 10:00pm. Click on "EVENTS" at [CAI-SEFlorida.org](http://CAI-SEFlorida.org)

Apr. 30: **HOT TOPIC-HOT BREAKFAST** \*- Monthly Broward Breakfast Meeting 1-hour CE credit after breakfast. CAI CAM Members eat FREE!

May 15: **CAI ANNUAL CONFERENCE & EXPOSITION** - Orlando, Florida from May 15 to May 18. Details at [CAIOnline.org](http://CAIOnline.org).

May 28: **HOT TOPIC-HOT BREAKFAST** \*- Monthly Broward Breakfast Meeting 1-hour CE credit after breakfast. CAI CAM Members eat FREE!

JUNE: **FLORIDA KEYS EDUCATION & NETWORKING EVENT**. Details coming soon. Keep up-to-date with [CAI-SEFlorida.org](http://CAI-SEFlorida.org)

June 25: **HOT TOPIC-HOT BREAKFAST** \*- Monthly Broward Breakfast Meeting 1-hour CE credit after breakfast. CAI CAM Members eat FREE!

JULY: **MIAMI-DADE NETWORKING MIXER**. Details coming soon. Keep up-to-date with [CAI-SEFlorida.org](http://CAI-SEFlorida.org)

Jul. 30: **HOT TOPIC-HOT BREAKFAST** \*- Monthly Broward Breakfast Meeting 1-hour CE credit after breakfast. CAI CAM Members eat FREE!

AUG: **SOUTHEAST FLORIDA LEGISLATIVE FORUM**. Details coming soon. Keep up-to-date with [CAI-SEFlorida.org](http://CAI-SEFlorida.org)

\*Check [cai-seflorida.org](http://cai-seflorida.org) for specifics of each "HOT TOPIC-HOT BREAKFAST." Registration and payment links also provided online!



## From the Desk of the Executive Director

Jill Proietti, CED, [ced@cai-seflorida.org](mailto:ced@cai-seflorida.org)



**G**reetings! As we embark on 2019, we are making plans for the year to include our famous networking events... and we have our first two scheduled.

The first one in Ft Lauderdale at a new location, Doc B's, on Wednesday, February 27! Then we return to our 4th Annual Ball & Chain extravaganza, on Wednesday, March 13<sup>th</sup>, always a fan favorite and still the highest attendance record holder! This year, we are bringing Monroe County into the mix with an education and networking event in the Keys! Tentatively scheduled for June 14<sup>th</sup>, details being worked on as we speak (well...write!). Stay tuned to our website, [cai-seflorida.org](http://cai-seflorida.org), for all future happenings. Our monthly breakfast at Jacaranda County Club continues to be very popular, and our Manager Members enjoy the Hot Topics/Hot Breakfast networking and CEU opportunity for **FREE** each month!

Our Annual Golf Tournament will take place on Friday, April 12, 2019, at Jacaranda Country Club. Each year the tournament gets bigger and better and this year will be no exception. We had a total of 156 golfers last year, so if you have never golfed with us, join in on the fun! There are games, raffles, drinks, food, and, oh yes, golfing!! The awards dinner after golf is always top notch! Please visit [cai-seflorida.org](http://cai-seflorida.org) to check out the event sponsors, and if you are interested in sponsoring or golfing, simply call or email and I will assist with your request.

Our Annual Sponsor Appreciation Dinner will be Wednesday, April 24<sup>th</sup>, returning to the beautiful Pier 66 Rooftop. If you are interested in attending, you better act fast, as these tickets sell out almost every year. A big **Thank You!** to our Chapter Sponsors, the reason our chapter continues to thrive and grow and is the successful chapter it is!

We are changing up our Trade Show format. We will have two Legislative Forums, one in Broward and one in Dade County, focusing on CAI's efforts to assist our members with all things Legislative. The format will include Keynotes, informative panels and CEU credits for managers. It will be new and exciting, so please stay tuned regularly for further details.

We always encourage suggestions and participation on our committees so that we may bring you all the programs you, as members, are interested in. Please feel free to email me at [ced@cai-seflorida.org](mailto:ced@cai-seflorida.org) or call 954-816-0661. Please check our website regularly for all of our upcoming events; you wouldn't want to miss anything! I look forward to seeing you at our next event!

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We welcome our new (and renewed/re-joined) Chapter Members! July 1, 2018 to February 15, 2019. New members highlighted in bold. See you at our next event!

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*Note: existing companies and organizations may appear in bold (as new) if they added new individual members through the company, as Business Partner Members. In addition, existing individual members may appear as 'new' if he/she rejoined while changing membership type.*

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# CAI Leadership FORUM

FLORIDA COMMUNITIES



On February 8, 2019, Florida community managers, homeowners and association board members, and business partners joined together for an event that focused on engaging in advocacy efforts. They also discussed legislative trends and hot topics that affect all aspects of community association living. The CAI Leadership Forum affords the opportunity to hear from local and statewide legislative leaders, the Florida Legislative Action Committee and other respected legal experts.



Above, left to right: Vishnu Sharma, Mary Macfie, Lisa Magill, Esq. and Michael Bender, Esq.



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# What are the different types of drain cleaning methods and which ones are the most effective?

SPTPipe.com Blog



It's true that a timely sewer inspection can save you from having to get time off from work in case of emergencies, but what happens when there's a clog? You'd assume that it can be solved with a handy drain cleaner, but this is not the case. Thankfully, there are several proven methods of drain cleaning processes to rid yourself of pesky clogs. These types range from basic to professional, using different tools from handhelds to high-tech equipment.

The end result should be the same- a clear pipe that's almost as new as the original condition. A pipe that can last for several more decades after the drain cleaning has been completed. SPT utilizes only the best and the latest drain cleaning equipment to deliver excellent results each and every time

## Hydro Jetting

This green drain cleaning solution uses mostly high-pressure water and a special nozzle to unblock the clog. A flexible hose connects through an adjustable nozzle that emits water to disintegrate sludge, soap, grease, calcified deposits, and ordinary household objects. Even tree roots that have invaded the joints of your pipes will get flushed away to the municipal sewer system. The water flow is noticeably improved and the pipelines are clean and ready for immediate usage again following the cleaning session

Unlike commercial drain cleaners, hydro jetting will not cause potential harm such as environmental hazards, contamination, or advanced corrosion because it relies on pure water to get the job done. Most of all, hydro jetting won't require extensive landscape digging and excavation. When used by our skilled technicians, it won't cause damage to

your pipes. It's applicable to both residential and commercial sewer and drain lines. The equipment is largely portable and can be brought in the van for fixing drains in homes, restaurants, and offices. The entire process only takes a few hours to be completed and you won't have to spend days without water main access.

## Traditional Methods

For sensitive piping materials, our technicians can still bring out traditional drain cleaning tools such as snakes and augers. When used properly and in the right hands, these tools can clear up clogs to avoid untimely emergencies.

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Here at SPT, we take into consideration the scope and nature of the drain problem to come up with the best solution. The approach is always the same, whether the issue occurs in the kitchen drain, the bathroom drain or the basement drain. Our sewer line inspections require absolutely no digging. We can see what's ailing your pipes using one access point. Call us and get the best drain cleaning services in Florida today!





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# Loan Repayment Options...whether or not to special assess

-Lisa Elkan, VP/Association Financial Partner and Josh Ormiston, VP of Association Lending, Alliance Association Bank



**W**hen an association decides to take out a loan to finance a capital improvement project, there are three main options in which an association may choose to generate funds for repayment of the loan.

1. Allocate Funds from the Existing Budget
2. Raise Regular Assessments
3. Implement a Special Assessment

Each option has its own benefits and pitfalls. The option chosen may have an impact on the community support for the project and the general attitude toward the association's board and/or property manager.

By choosing to finance a capital improvement rather than pay cash, the cost for the improvement is being allocated over a longer period of time. If an association is already budgeting to contribute a certain dollar amount to their reserve fund each year, it may be possible to allocate a portion of this contribution to cover the loan payment. Similarly, if the capital improvement being made will reduce future operating costs, the savings may be enough to cover the loan payment. When going this route, it is important to consider what future reserve contributions will need to be in order to keep adequate funds available for future projects. This is a very attractive option for communities that are able to do this, as there will generally be more

support for projects that improve the community and don't require a dues increase. Unfortunately, this may not be feasible for a community, and one of the other options would need to be considered.

The main factors that will most likely contribute to a community's decision of whether to special assess or just increase its regular assessments, are the size of the increase and the voting requirements necessary to implement the increase.

For loans that require smaller increases to the aggregate assessment level, it may be appropriate to just increase the regular assessments. Typically it is less onerous to implement a regular assessment increase, and it may be done with simple board approval rather than a mass homeowner vote. If the project that the loan is for isn't controversial and the financial impact to unit owners is negligible, increasing regular assessments is efficient and simple. If the assessment increase is large, the governing documents may require a homeowner vote, and in the case that they don't require a homeowner vote, there may be backlash from the community if an option to have input into the decision making process isn't afforded to them.

Continued on page 22



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Below is a letter from President Cat Carmichael, CMCA, PCAM

In January, CAI reached a new milestone with our membership now exceeding 40,000! This result is directly related to the enthusiasm and collaboration among our national leaders, chapters, and incredible staff. Our products, services and advocacy have proven impactful for our members in their business and personal relationships, and we will continue to show value in excess of our members' investments in CAI.

Leaders, please continue your efforts to seek new members and show what strong brand

ambassadors we are for CAI. We directly benefit from other members to create better communities we serve and I'd like to emphasize that there truly is strength in our numbers.

40,389 members understand that it's better to be a member of CAI than not!

Thank you for your service and commitment to CAI.

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Even with proactive management, all stormwater ponds will eventually become impaired due to accumulated sediment from excessive nutrients and runoff. Dredging is an option, but is often the largest single expenditure a community will face. So, when the time does come to remove sediment from your lake or pond, consider hydro-raking as an effective, environmentally-friendly and economical alternative.

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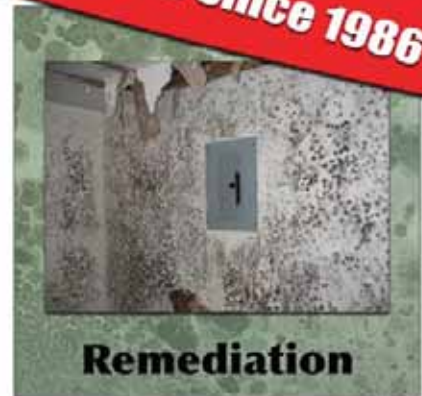
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# Water damage in a condo: Who is responsible?

-TheWaterRestorationGroup.com Blog



In Florida, water damage in a condo has and probably always will be a common issue. With the annual hurricane season and the year-round tropical climate that brings frequent showers, there is always a good chance that there might be some water damage somewhere in or on a residential property such as an apartment building, single family home or condo. A building with a community association must have a property insurance policy that covers any damages to common areas like lobbies, parking garages, parking lots, building exteriors, elevators and other shared spaces. This means any water damage that occurs to those areas should be covered by the insurance (Unless it was caused by storm surge, in which case it would be left up to hurricane and/or flood insurance, in most cases).

When it comes to water damage in a condo, however, it begins to become more complicated. Identifying who is truly responsible for the water damage inside of a condo can be, sometimes, like a game of ping pong between homeowner's/community associations, individual condo owners or homeowners and their insurance companies.

## Subrogating the Claim

Although it is a common issue facing community associations across Florida, even association lawyers get confused with this sometimes. There are laws and amendments made all the time that continually change certain rules, shifting the responsibility, depending on where the damage really originated. The bottom line is this: it depends

on the cause of the damage. Whether your association's property insurance is notified of the water damage first or whether the condo owner's or tenant's insurance is notified first, the insurance company will proceed to subrogate the claim against all other policies in play. Water damage in a condo involves weighing the different policies against each other to see which party is responsible for paying for the damage, depending on how the damage occurred.

## Rule of Thumb

As per Florida Statute 718.111(11)(f) the association is responsible for everything except the following, which is the unit owner's responsibility:

All personal property within the unit or limited common elements; water heaters and filters, electrical fixtures, built-in cabinets, appliances, floors, walls, ceiling coverings, hardware, blinds, drapes, counter tops, and window treatments.



**Drywall:** This specific item can be tricky, but here is the clarification. Drywall out is the association's responsibility and drywall finish such as textures or paint is the responsibility of the unit owner. Bare floor up is the owner's responsibility as well.

Continued on page 22





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## RULES/ELIGIBILITY

1. CAI Manager Member
2. Licensed CAM
3. Attended at least four CAI-SEFL events during previous 12 months
4. Minimum 8 hours volunteer time serving on a committee or assisting at Chapter events during the past 12 months
5. Application (online)
6. Essay (online)

## APPLICATION PROCESS

1. Complete the online application
2. Provide the course work or license you plan to complete with this scholarship

## ESSAY

Essay topic should be tied to your Community Association experiences and demonstrate how you utilized your education and abilities to assist a Community and/or Board with a problem.

Within the essay, be sure to include specifics as to your aims and objectives as well as the methods or methodologies you used to assist with solving the problem, and how your education allowed you to successfully assist the Community.

◆ **PCAM: DEC. 31, 2022**  
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\*submission process must be completed in one session (no online saving)



# 6 Leading Causes of Florida Fish Kills

-Aquatic Systems Lake & Wetland Services



## WHY ARE THE FISH IN OUR LAKE DYING?

**Fish kills happen in Florida. They are alarming and can be a major turn off to prospective new home owners, board members and residents. Read on to learn why fish kills happen.**

### #1 – Extended Cold Weather

Florida fish are just like us, acclimated to warm temperatures. In the winter, temperatures are rarely below 50°F (10°C) for more than a day or two. Cold snaps that hang around drop the water temperature below about 55°F (13°C) stressing nearly all our non-native tropical fish species. Tilapia, peacock bass and other cichlid species are particularly vulnerable to cold temperatures.

Any fish species can be stressed by temperatures that drop more quickly than about 1°C per day. Therefore, both native and exotic fish will not survive if the cold weather stays around too long.

### #2 – Fall Lake Turnover

Turnover occurs when surface water mixes with water near the lake bottom. The bottom water may contain little or no oxygen and have high concentrations of toxic gasses like carbon dioxide and hydrogen sulfide that are potentially lethal to fish. Turnover in Florida lakes happens naturally each Fall as the season's first strong cold front in October or November rapidly lowers surface water temperatures and with strong winds, combine to mix the water column.

### #3 – Watershed Runoff

Storm water run-off high in organic content and chemicals creates a spike in dissolved oxygen demand that can quickly lower lake oxygen levels and raise ammonia, nitrogen and turbidity enough to harm or kill fish populations. Sometimes recently applied fertilizer, pesticides and asphalt sealers in watershed runoff are directly toxic enough to cause a fish kill.

### #4 –Golden Algae Bloom

A rarer cause of fish kills is a bloom of golden algae which releases a toxin that suffocates fish. As the name suggests, Golden algae are not green in color and the blooms are generally not readily noticeable to the human eye. A quick microscopic algal identification by a trained biologist can determine if Golden algae is behind a recent fish kill.

### #5 – Summer Heat Reduces Oxygen

In Florida, low dissolved oxygen levels are by far the most common cause of a sudden fish kill and usually occur in the warmer months from May through September. Fish swimming near the surface of the water, and appearing to be gulping for air indicate a low oxygen problem. Many factors cause low dissolved oxygen levels in a body of water:

- High summer water temperatures
- Highly organic bottom muck
- Dense plankton algae blooms
- Intense tropical rainstorms flushing in organic debris with extended cloudy weather conditions

### #6 – Fish Get Diseases Too

Fish are as vulnerable to disease as other wildlife and sometimes a pond or lake experiences a natural widespread fish kill caused by a disease. Although less common, disease should be considered especially when only one species of fish in an otherwise healthy lake is dying.

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## Whether or not to special assess

Continued from page 12



It is often prudent to have a homeowner vote even if one is not required. This may delay the process slightly on the front end, but it may also save lots of time and headache on the back-end. If a group of homeowners decides to file a lawsuit it may end up costing more time and money than it would have taken to simply have a homeowner vote, regardless of whether there was any merit to the lawsuit or not. As an added bonus, doing so may help with getting approved for a loan.

Oftentimes special assessments require homeowner votes and are viewed as a burdensome task. Nevertheless, they offer some significant advantages over just doing a regular assessment increase. Firstly, as discussed previously, for large projects a vote may be the best course of action. Also, by utilizing a special assessment, it is easier to segregate what funds are for operating and non-operating expenses which is helpful for general bookkeeping. Most importantly though, a special assessment allows a community to give homeowners the option of whether or not they want to participate in the lending program. A special assessment allows unit owners to prepay their share of the project cost up-front rather than having an increased monthly assessment. Then those who wanted to avoid interest costs could, and those that couldn't afford a large lump sum payment may pay for the project over time. If this approach is used, all residents are given options that may make approving a large dollar project more palatable.

## Condo water damage

Continued from page 18

### Unit to Unit



If, for example, there is a unit above another and the top unit's toilet leaks through to the ceiling of the unit underneath it, there would be three insurances

involved here. The unit owner who's toilet is leaking would be responsible for the getting the toilet repaired. The unit owner underneath would be responsible for his or her personal property and even the drywall finishes, as stated above. The association in this case would be responsible for any damage to the drywall and the electrical wiring within walls and/or insulation.

### Property Dry Outs after Water Damage to a Condo

The Florida statute doesn't offer much clarity when it comes to water damage in a condo, specifically when it has leftover standing water. It is, however, in a community association's interest to have this taken care of as soon as possible so that more damage isn't inflicted on the property that can then affect another unit owner's property and eventually, require the association to get involved anyway. Standing water also threatens the certain structural parts of the building with mold development and even deterioration. In some cases, it might make sense for the unit owner and the association to split the cost of a thorough, professional water dry out; in other cases, it might make more sense for the community association to take on the cost.

### Negligence

Lastly, negligence on a unit owner's part absolves the association of any responsibility and requires the unit owner to handle costs of repairs. It's important to clearly define negligence in any documents, bylaws, or rules and regulations given unit owners from the start, to avoid taking on unjustified costs or avoiding escalation into unnecessary legal battles.



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# Nuisances...what is a Board to do?

~Jeffrey A. Rembaum, Esq., Kaye Bender Rembaum, Rembaum's Association Roundup



The dog barks, and the parrot squawks. A neighbor is cooking with too much garlic, again. An owner is smoking non-stop on their balcony making it unpleasant for everyone else. A neighbor, several neighbors, or even many neighbors are complaining to the board. What is a community association board to do?

In dealing with any possible nuisance, the board should first decide whether or not the activity in question constitutes a "nuisance." Bear in mind, an individual's personal hypersensitivity to another's activity is not a nuisance. Ask yourself, if you were the ordinary person, a judge or a member of the jury, do you believe that the conduct in question is so noxious that it truly rises to causing a nuisance? Is it only one person, or family, that is bothered by the alleged noxious activity or is it half of the community? Singular neighbor to neighbor disputes are not a matter for the board to contend. The board should not put itself into a position as the "referee." Arguably, the only time a board may be obligated to act in a neighbor to neighbor dispute is when a Fair Housing Act violation occurs or when the board has actual knowledge of a life-threatening activity taking place.

In the event the board determines that a nuisance is actually occurring, then it is time to act. The board, typically through the manager, should first send a letter to the offending owner alerting them to the nuisance behavior, explain how the behavior is creating the nuisance and importantly, provide the specific relief sought. The letter should be firm, but not over-the-top. Ask yourself, if you were the owner causing the nuisance behavior and you received the letter from your association, would you respond in a positive manner? Remember the golden rule, to treat others as you wish to be treated.

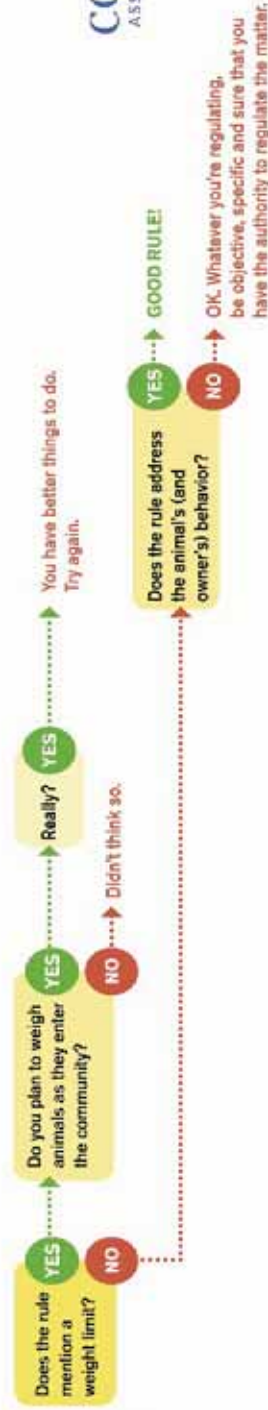
After sending the initial letter, the dog still barks, and the parrot still squawks. Now what? Well, it is time to consider other measures such as fining and use right suspensions. Pursuant to legislation first enacted in July 1, 2015, the board, at a properly noticed board meeting, must set the fine or use right suspension. However, before a fine or suspension can be imposed against the offending owner, a 14-day written notice and opportunity to appear in front of the grievance committee (a/k/a the "fining committee", the "rules committee", the "violations committee", etc.) must be sent to the owner. If the grievance committee does not agree exactly with the board's prior decision to fine and/or suspend use rights, then the fine or suspension may not be imposed. If the grievance committee does so agree, then the offending owner must be provided with written notice of such decision.

If the nuisance continues, another tool that is available to community associations is the filing of a lawsuit against the owner causing a nuisance. In some instances, it may be necessary for condominium associations to file an arbitration action with the Division of Florida Condominiums, Timeshares, and Mobile Homes. For a homeowners' association, before filing a lawsuit, the association must comply with mandatory mediation requirements set out in Chapter 720, Florida Statutes.

If the arbitration or mediation, as the case may be, is not successful in curbing the nuisance behavior, then it is time to seek relief by filing a lawsuit in the local Circuit Court asking for an injunction to curtail the behavior. Obviously, the board will need to discuss this situation, in advance, with the association's legal counsel.

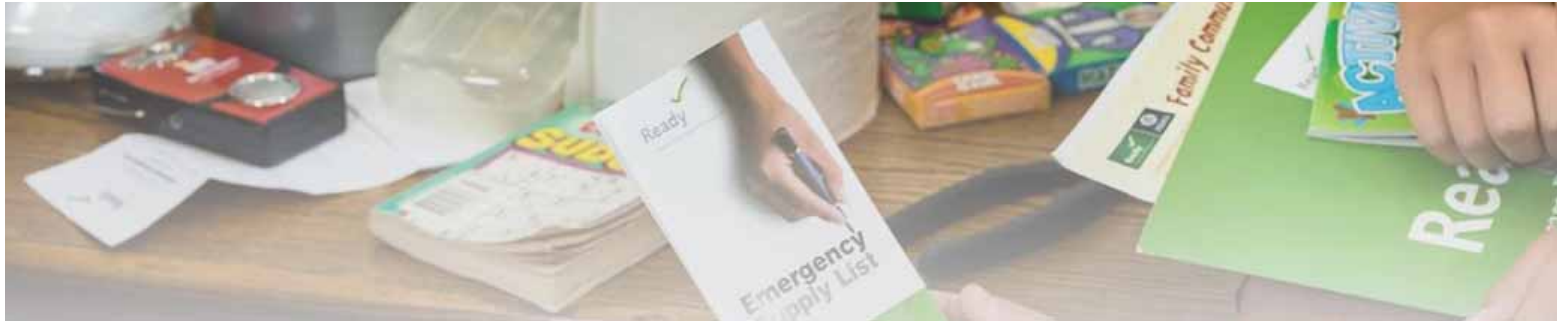


# Is It a Good Rule?



# Building a hurricane kit...it's never too early to have a plan!

-Ready.gov



**Y**es, we know it's early. But, the time to acquire disaster prep knowledge is **BEFORE** the disaster. When an event is looming, it is not uncommon for us to not think clearly, rushing through planning, and, finding that what you need is not available. In addition, if you haven't noticed, storms are forming earlier, and lasting later into the season. Furthermore, stronger storms are the new normal. With all of that said...Plan to **BUILD A KIT!**

Make sure your emergency kit is stocked with the items on the checklist below. Most of the items are inexpensive and easy to find, and any one of them could save your life. Once you take a look at the basic items, consider what unique needs your family might have, such as supplies for pets, or seniors.

After an emergency, you may need to survive on your own for several days. Being prepared means having your own food, water and other supplies to last for at least 72 hours. A disaster supplies kit is a collection of basic items your household may need in the event of an emergency.

## Basic Disaster Supplies Kit

To assemble your kit, store items in airtight plastic bags and put your entire disaster supplies kit in one or two easy-to-carry containers such as plastic bins or a duffel bag. A basic emergency supply kit could include the following recommended items:

- Water - one gallon of water per person per day for at least three days, for drinking and sanitation
- Food - at least a three-day supply of non-perishable food
- Battery-powered or hand crank radio and a NOAA Weather Radio with tone alert
- Flashlight
- First aid kit
- Extra batteries
- Whistle to signal for help

- Dust mask to help filter contaminated air and plastic sheeting and duct tape to shelter-in-place
- Moist towelettes, garbage bags and plastic ties for personal sanitation
- Wrench or pliers to turn off utilities
- Manual can opener for food
- Local maps
- Cell phone with chargers and a backup battery

## Additional Emergency Supplies

- Prescription medications
- Non-prescription medications such as pain relievers, anti-diarrhea medication, antacids or laxatives
- Glasses and contact lense solution
- Infant formula, bottles, diapers, wipes, diaper rash cream
- Pet food and extra water for your pet
- Cash or traveler's checks
- Important family documents such as copies of insurance policies, identification and bank account records saved electronically or in a waterproof, portable container
- Sleeping bag or warm blanket for each person
- Complete change of clothing appropriate for your climate and sturdy shoes
- Household chlorine bleach and medicine dropper to disinfect water
- Fire extinguisher
- Matches in a waterproof container
- Feminine supplies and personal hygiene items
- Mess kits, paper cups, plates, paper towels and plastic utensils
- Paper and pencil
- Books, games, puzzles or other activities for children

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# What do you mean...I can't bring my own personal trainer to the Clubhouse Gym?

by: Jeffrey A. Rembaum, Esq.; Kaye Bender Rembaum; from 'Rembaum's Association Roundup'

In the recent Fourth District Court of Appeal case of Charterhouse Associates, Ltd., Inc. v. Valencia Reserve Homeowners Association, Inc., decided November 28, 2018, the Court determined whether a homeowner is entitled to bring their own personal trainer to the association's fitness center where the association's board of directors enacted a new rule prohibiting private trainers, instructors, physical therapist, and massage therapists from working in the fitness center.

In this case, Charterhouse Associates, Ltd., Inc. owned the lot within the association's community and authorized Kenneth and Gail Browne to reside at the property and assume the ownership rights of the corporation, which included membership within the association. The Browne's brought their personal trainer to the clubhouse on several occasions but were later prohibited from doing so because of the aforesaid rule adopted by the board.

The association's Declaration of Covenants, provided in relevant part, that the association property, which includes the fitness center, was reserved for the private use and enjoyment of... "the owners, and their family members, guests, invitees and tenants, but only in accordance with this Declaration." In addition, the owners, their family members, guests, tenants, agents, and invitees, all had a permanent and perpetual, nonexclusive easement for ingress and egress over, enjoyment in, and use of the association property. Also, the Declaration provided the board the right to establish rules and regulations pertaining to the use of the association property. Because the association entered into a contract with a private provider, it enacted the rule prohibiting private personal trainers, amongst others.



Initially, the trial court, as a result of the summary judgment hearing, ruled in favor of the association. On appeal, the appellate court reviews trial court decisions stemming from summary judgment hearings in a light "most favorable to the non-moving party." The appellate court, in addition to focusing on whether the trainer was an "invitee" of the Browne's who was prohibited by the adopted rule in question, also focused its analysis on whether the board had the authority to enact the rule which prohibited the Browne's trainer in the first place.

The appellate court looked to an often-cited case, Beachwood Villas Condominium v. Poor, a 1984 Fourth District Court of Appeal case. In this appellate decision, the Court looked to a decision from yet an older 1981 appellate case, Hidden Harbor Estates, Inc. v. Basso, which suggested that condominium rules fall into two classifications: those rules set out in a declaration of condominium and thus approved by the membership, as compared against those rules adopted by the board.

*Continued on page 29*





The rules contained in the declaration itself are clothed with a strong presumption of validity. However, board adopted rules are reviewed by first determining whether the board acted within its scope of authority and then whether the rule reflects reasoned or arbitrary and capricious decision-making.

As to the board adopted rule prohibiting private trainers, the appellate court held that the board's

adopted rule prohibiting the member's private trainer directly conflicted with the declaration's provision granting all owner's invitees access to the fitness center. Therefore, the appellate court held that the board adopted rule contravened an express provision of the declaration and thus, the board exceeded their scope of authority by enacting the rule in the first place.

Ultimately, what can be gleaned from this case is that before determining whether a board adopted rule is reasonable as compared against being arbitrary and capricious, is to first ensure that the requisite authority exists for the board to adopt a rule in the first place. Since the appellate court determined that the rule should not have been adopted because it was contrary to the terms of the declaration, the appellate court reversed the trial court and remanded the case back to the trial court for further proceedings consistent with their opinion.

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## Hurricane kit

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### Maintaining Your Kit

- After assembling your kit remember to maintain it so it's ready when needed:
- Keep canned food in a cool, dry place
- Store boxed food in tightly closed plastic or metal containers
- Replace expired items as needed
- Re-think your needs every year and update your kit as your family's needs change.

### Kit Storage Locations

Since you do not know where you will be when an emergency occurs, prepare supplies for home, work and vehicles.

- Home: Keep this kit in a designated place and have it ready in case you have to leave your home quickly.

Make sure all family members know where the kit is kept.

- Work: Be prepared to shelter at work for at least 24 hours. Your work kit should include food, water and other necessities like medicines, as well as comfortable walking shoes, stored in a "grab and go" case.
- Vehicle: In case you are stranded, keep a kit of emergency supplies in your car.

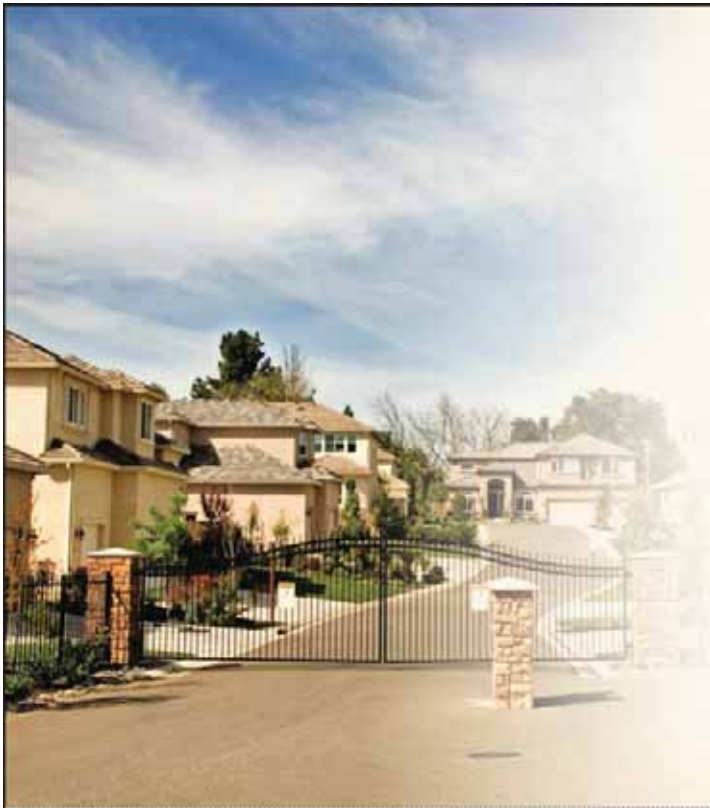


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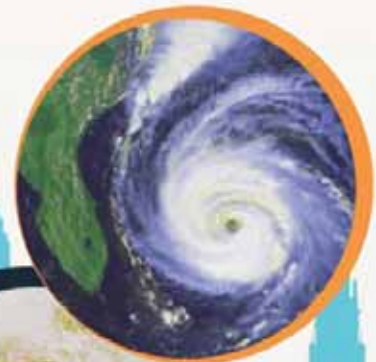
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