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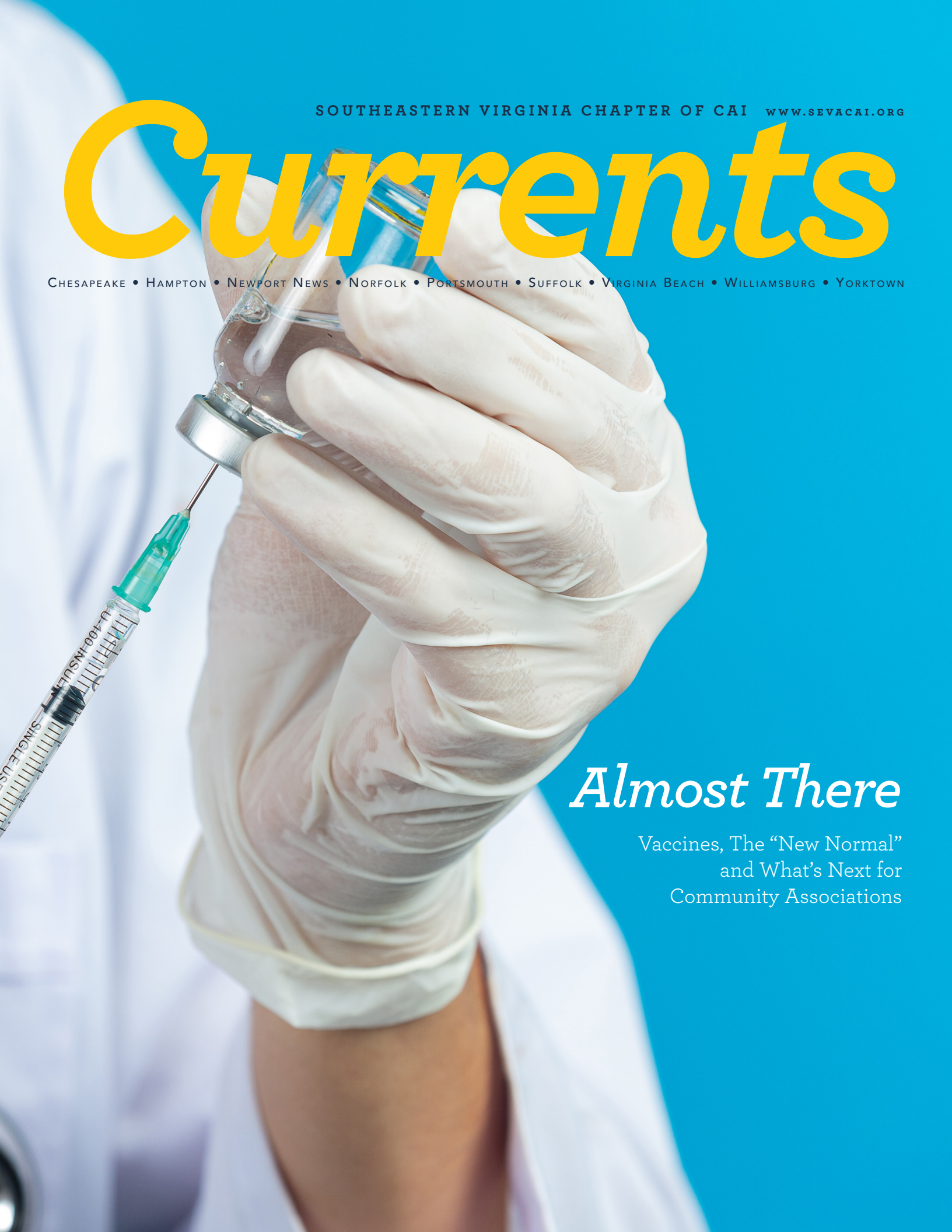

Almost There

Vaccines, The "New Normal" and What's Next for Community Associations

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Currents

Articles, ads or other submissions must be submitted prior to the dates listed below for inclusion in the issue immediately following. All dates are firm. If submission is missed, updates will be in the following issue.

Q2 2021
April 15th

Q3 2021
July 15th

Q4 2021
October 15th

Q1 2022
January 15th

Currents encourages and welcomes articles on any topic relating to the many "Currents" of community association interest. Please include a twenty to thirty word description of the author at the end of the article. All articles are subject to editing.

Please send your submissions to:
kniesel@solitudelake.com

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President's Award

Cariese Hinckley
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Watch our virtual awards ceremony on YouTube >>

FROM THE executive DIRECTOR

As we wrap up 2020, I just want to reiterate how grateful we are for the support of our long-time volunteers & sponsors who have stuck with us during this year of firsts. We had to postpone our CA Day Education & Trade Show for the first time it its 34 year history. We hosted our first webinar, and followed it up with many more! We "hung out" with each other in our first Zoom networking event. And we celebrated our volunteers with our first virtual annual awards ceremony. (If you haven't had the opportunity to check those videos out - please take a moment to visit us on Facebook and congratulate our winners!) Needless to say, we couldn't have done it without you and we can't wait to see you in person soon!

In the spirit of "firsts", our 2021 Sponsorship & Advertising Guide features some brand new opportunities that we hope will more accurately fit the needs of our partners in this post-pandemic world. We still have a few available, if you want to take advantage of these new programs you can view othe package on our website. We're very excited to start rolling these options out, please let us know what you think!

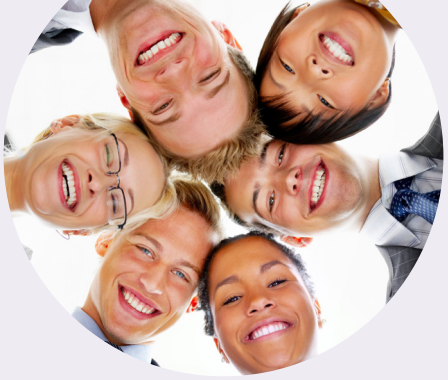
We're kicking off 2021 with another first - our first office move! We said goodbye to our Diamond Springs location and opened a new space in Virginia Beach Town Center. It is always our goal to make the best possible use of the Chapter's financial resources so that we can continue to bring you relevant education and valuable networking opportunities. The success of the Chapter's virtual programming in 2020 allowed us to downsize both our footprint and our overhead expenses. All of our other contact information has remained the same, but you can now find us at:

4867 Baxter Road
Suite 104
Virginia Beach, VA 23462

We hope you come and see us soon!

C. Hinckley

Cariese Hinckley
Chapter Executive Director
Southeastern Virginia Chapter Community Associations Institute



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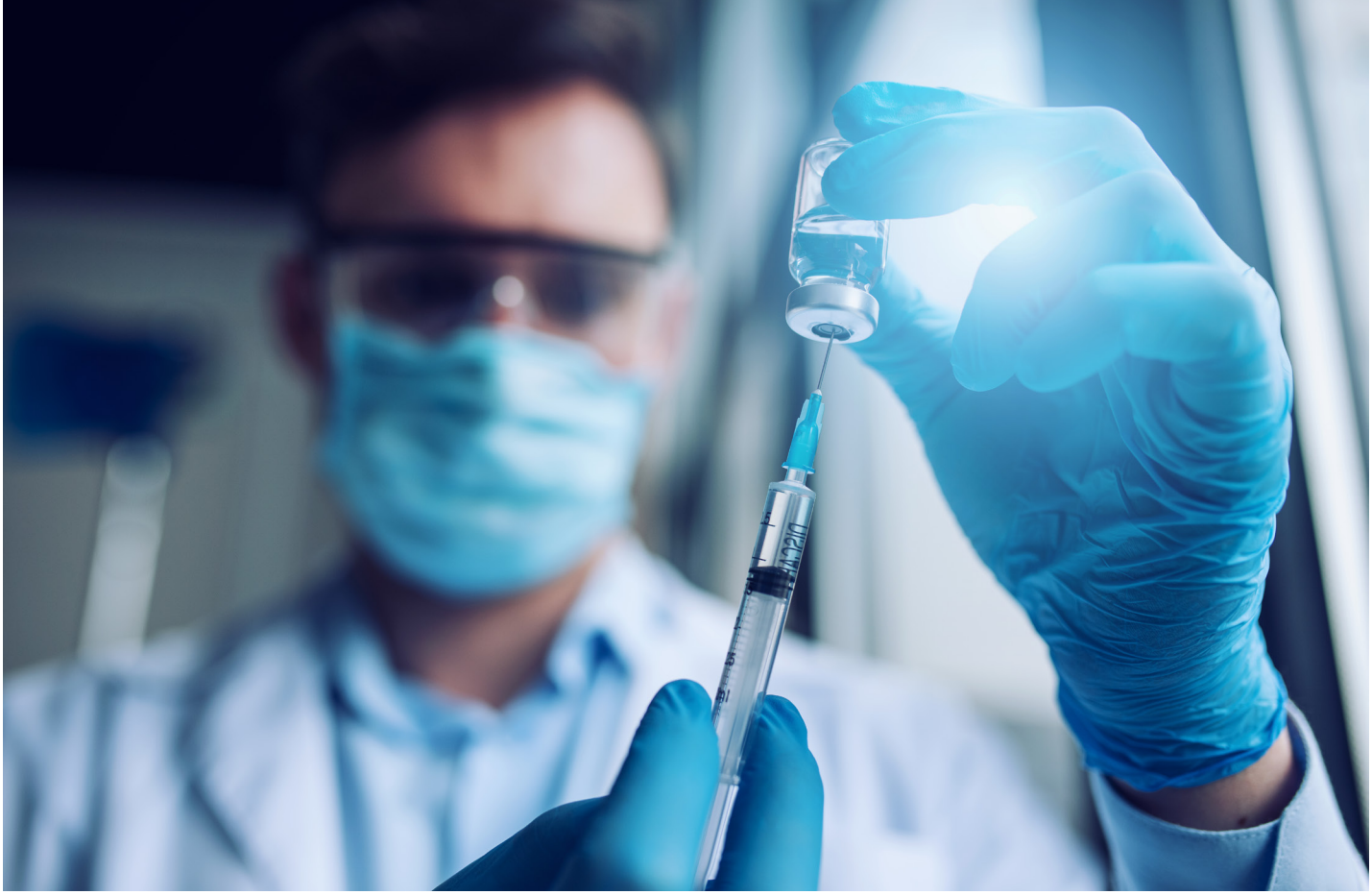


Employers, *Can You Require Employee Vaccination?*

By **Lindsay Bunting Eubanks, Atty at Law,** *Sands Anderson, P.C.*

In the era of the COVID-19 pandemic, employers struggle to navigate persistent disruptions to the normal ways of doing business. Individuals and businesses alike crave the panacea that an effective COVID-19 vaccination might bring. But once the day of the vaccine comes—and many decision makers indicate that it is coming soon—can it really help workplaces return to pre-pandemic conditions absent a requirement to take it? Importantly, can businesses and public employers legally require their employees to be vaccinated? While the answer is complicated, vaccine mandates are possible if the employer allows certain employee exemptions. The two types are: (1) exemptions under the Americans with Disabilities Act (ADA) and (2) religious based exemptions under Title VII of the Civil Rights Act of 1964 (Title VII).

Under normal circumstances, the ADA precludes employers from requiring any type of medical examination as a condition for employment or from making any disability-related inquiries. However, when the spread of a certain disease rises to the level of a "direct threat" to the health and safety of the workplace, (in other words, when disease becomes a declared pandemic), employers may follow guidance from the Centers for Disease Control and other public health entities, and mandate such protocols as temperature checks and self-reporting of COVID-19 symptoms before they allow their employees to return to work.[1]

An employee imposes a "direct threat," according to the EEOC, based on the following four factors: (1) the

duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that potential harm will occur; and (4) the imminence of the potential harm.[2]

However, this loosening of ADA-related restrictions for medical inquiries in the workplace due to the "direct threat" of a pandemic does not allow the employer to enforce vaccination mandates for everyone.

Regardless of COVID-19 being categorized as a "direct threat" to workplace health and safety, the EEOC has issued guidance that denies the ability of an employer to compel all of its employees to receive a COVID-19 vaccine when those employees assert valid disability-related or religious liberty-related concerns or objections.

What Can Employers Do Now?

Nonetheless, employers who allow for these exemptions can have a vaccination policy. In order to qualify for exemptions to that policy, employers may require objecting employees to provide sufficient paperwork to justify their exemption from vaccination. In fact, some courts will even uphold employee terminations when employees fail to fill out or attach appropriate documentation to an exemption request form.[3] Employers can also require proof of the sincerity of religious liberty-based objections to vaccinations.

Also, if future federal or state laws or regulations require the COVID-19 vaccination in certain industries or fields, religious liberty-based objections to vaccination under Title VII and the U.S. Constitution may hold even less weight. This is due to a line of cases citing to Jacobson v. Massachusetts, in which the Supreme Court of the United States upheld a compulsory vaccination law in Massachusetts "as a valid exercise of the state's police power, rejecting the plaintiff's claim that a law requiring children to be vaccinated as a condition to attending public or private schools violated" constitutional protections.[4]

Regardless of what future laws or regulations might come, now is the time for employers to start examining their own vaccination policies according to the needs of their specific business or industry. An attorney can help craft a robust vaccination policy for any employer attempting to navigate the changing landscape of employment law and regulation during a pandemic while simultaneously protecting the health of their employees and clients/customers alike.

[1] See 29 C.F.R. § 1630.2(r).

[2] See "Pandemic Preparedness in the Workplace and the Americans with Disabilities Act," EEOC, (referencing 29 C.F.R. § 1630.2(r); 29 C.F.R. pt. 1630 app. § 1630.2(r)).

[3] See Chmura v. Monongalia Health Sys., 2019 U.S. Dist. LEXIS 134373 1, 3-7 (N.D. W.Va. 2019).

[4] See F.F. v. State of New York, 114 N.Y.S.3d 852, 860-61 (N.Y. Sup. Ct. 2019) (citing Jacobson v. Massachusetts, 197 U.S. 11, 25-27, 38, 25 S. Ct. 358, 49 L. Ed. 643 (1905)).

Lindsay Bunting Eubanks is a lawyer with Sands Anderson, P.C. who focuses on labor and employment, business, and local government law. A native Virginian, raised in the Tidewater area, she is a graduate of the University of Virginia and William and Mary Law School.

Regardless of COVID-19 being categorized as a "direct threat" to workplace health and safety, the EEOC has issued guidance that denies the ability of an employer to compel all of its employees to receive a COVID-19 vaccine when those employees assert valid disability-related or religious liberty-related concerns or objections.

Virginia Circuit Court Upholds Rule Requiring Residents to Sign Assumption of Risk Form as a Condition to Using Certain Common Areas During the Pandemic

By **Deborah M. Casey, Atty at Law, CCAL.,** *Vandeventer Black LLP* and **Kathleen W. Panagis, Esq.,** *Vandeventer Black LLP*

A Charlottesville Circuit Court held that a rule promulgated by a Virginia property owners' association requiring residents to sign an assumption of the risk form prior to using certain common areas was reasonable. *See Norman v. Foxchase Owners' Assoc., Inc.,* Case No. CL20-1481 (Albemarle Cnty., Oct. 30, 2020). From what can be gleaned from a relatively short, but instructive, letter opinion, the case involved the following:

- The Declaration of Covenants and Restrictions ("Declaration") reserves to property owners an "easement of enjoyment in and to the common area", which right is subject to the authority of the association to "limit the number of members and to place other reasonable restrictions upon the common area." *Id.*

- Based on safety concerns related to COVID-19 transmission, the Association restricted access to the swimming pool, gym, and clubhouse facilities to those residents who signed an assumption of the risk form.

- A resident in the association filed a lawsuit alleging that the rule exceeded the authority contained in the Declaration. The court ruled in favor of the association and the resident subsequently filed a Motion to Reconsider.

- The court denied the Motion to Reconsider noting that Va. Code § 55.1-1819(A) provides property owners' associations with "the power to establish, adopt, and enforce rules and regulations with respect to the use of common areas…except where expressly reserved by the declaration to the members." *Id.* (*citing* Va. Code § 55.1-1819(A)). Looking to the Declaration, the court found that it reserved to owners an "easement of enjoyment in and to the common area", but that such easement right

is subject to the association having the authority to "limit the number of members and to place other reasonable restrictions upon the common area." *Id.* The court interpreted these provisions to mean that an owner's right to use common areas such as the pool, gym, and clubhouse are limited to reasonable restrictions imposed by the Association. *Id.*

- Notably, the court reiterated several practical considerations pertinent to its initial ruling. Specifically, that the COVID-19 pandemic presents a "unique and unprecedented safety challenge" and "[u]se of common area facilities, particularly without appropriate social distancing measures, could lead to transmission of the virus." *Id.* In addition, "[p]osted signs would not communicate the risks of transmission as effectively as a mandatory form…[because] [a] mandatory form compels the signatories' attention, if only for a moment, in a way that a posted sign does not." *Id.* Accordingly, the court found that the association's rule requiring residents to sign an assumption of the risk form prior to using certain common areas was reasonable.

This ruling provides helpful language and confirms that reasonable rules, for which there is express rule-making authority in a recorded document, will be upheld. It is not binding since it is a Circuit Court case, but may be persuasive. Further, the ruling in this case was based on the particular language contained in the Declaration. If an association considers adopting a similar rule, it should consult with association legal counsel for guidance.

Disclaimer: The information in this article is for general information and is not legal or tax advice. Nor does any exchange of information associated with this article in any way establish an attorney-client relationship.

Deborah M. Casey, CCAL® is a partner with Vandeventer Black and serves on the firm's Executive Board and Chairs its Community Associations law practice. She has represented Virginia community associations for more than three decades. Debbie is a Fellow in the College of Community Association Lawyers and is listed in Best Lawyers in America for Community Association law.

Kathleen W. Panagis is an Of Counsel attorney with Vandeventer Black LLP and a member of the firm's Community Associations law team. With more than a decade of experience, she serves as general counsel to homeowner and condominium associations located in Virginia. Kathleen is an active member of SEVA-CAI and serves as a member of the chapter's Communications Committee.

4821-7377-5314, v. 1

Virginia Adopts Workplace COVID-19 Standards

By **Susan Childers North, Esq.**, *Gordon & Rees*

Virginia recently became the first state in the nation to adopt workplace COVID-19 standards. For those community associations that have employees (compared to independent contractors), they will want to ensure that they're aware of the standards and adhere to them.

On July 27, 2020, the Emergency Temporary Standard/Emergency Regulation (the "Standard") went into effect and will expire in six months or when it is superseded by a permanent standard, whichever happens first. Alternatively, the Virginia Safety and Health Codes Board could repeal the Standard.

This new Standard was created to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program. It will be enforced by the Virginia Department of Labor and Industry.

Businesses that are in compliance with the Center for Disease Control and Prevention guidelines will be considered to be in compliance with this new Standard.

Below are the highlights of what the new Standard requires:

Employers must:

- Assess their workplace for hazards by tasks that can potentially expose employees to COVID-19 and categorize the tasks as "very high," "high," "medium," or "low" risk;

- Inform their employees about the methods of self-monitoring for signs and symptoms of COVID-19 and encourage their employees to self-monitor;

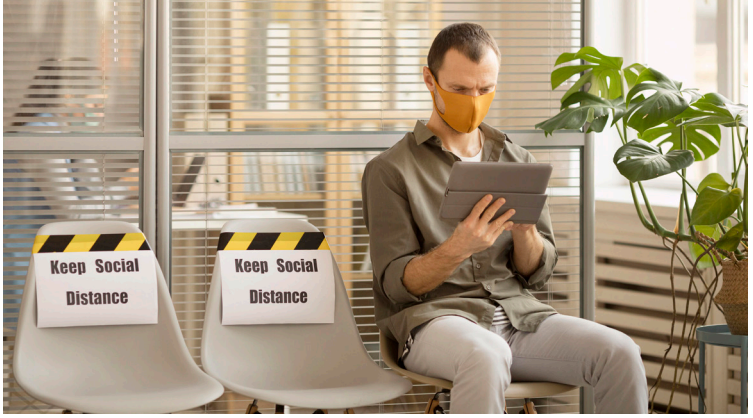
- Develop and implement policies and procedures for employees to report when employees are experiencing COVID-19 related symptoms and no alternative diagnosis has been made;

- Establish a HIPAA compliant system to receive positive COVID-19 test results by employees, subcontractors and temporary workers present at the place of employment within the previous 14 days from the date of the positive test;

- Provide notice to other employees within 24 hours (without identifying the person who tested positive) who could have been in contact with an infected employee if a positive test exists for an employee, subcontractor, temporary worker or others who were present in the workplace within the last 14 days from the positive test;

- Provide notice to the building/facility owner if two (2) positive COVID-19 employee tests exist so that the building/facility owner can sanitize the common areas of the building. The building/facility owner will then notify all tenants that one or more cases have been reported. The building/facility owner will also disclose the tenants and the floor and work areas in which the cases were located;

- Notify the Virginia Department of Health within 24 hours of the discovery of a positive test and notify the Virginia Department of Labor and Industry within 24 hours of the discovery of three (3) or more employees present at the place of employment within a 14-day period testing



positive for COVID-19 during that 14-day period;

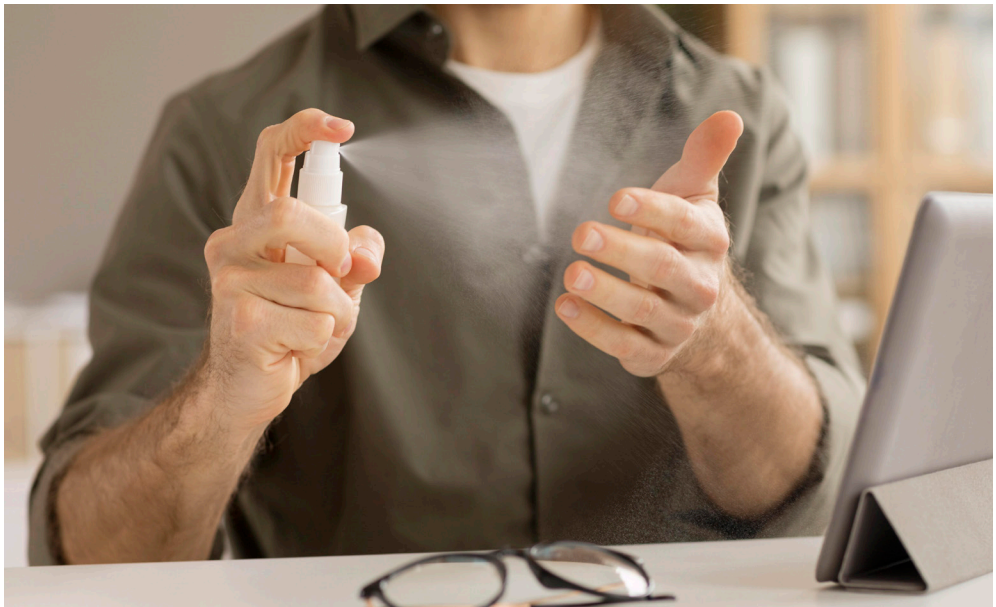
- Not permit employees or others known or suspected to be infected with COVID-19 to report to work or remain at the worksite or engage in work at a customer or client location until cleared for return to work;

- Develop and implement policies and procedures for employees with positive COVID-19 tests to return to work using either a time-based or test-based strategy; and

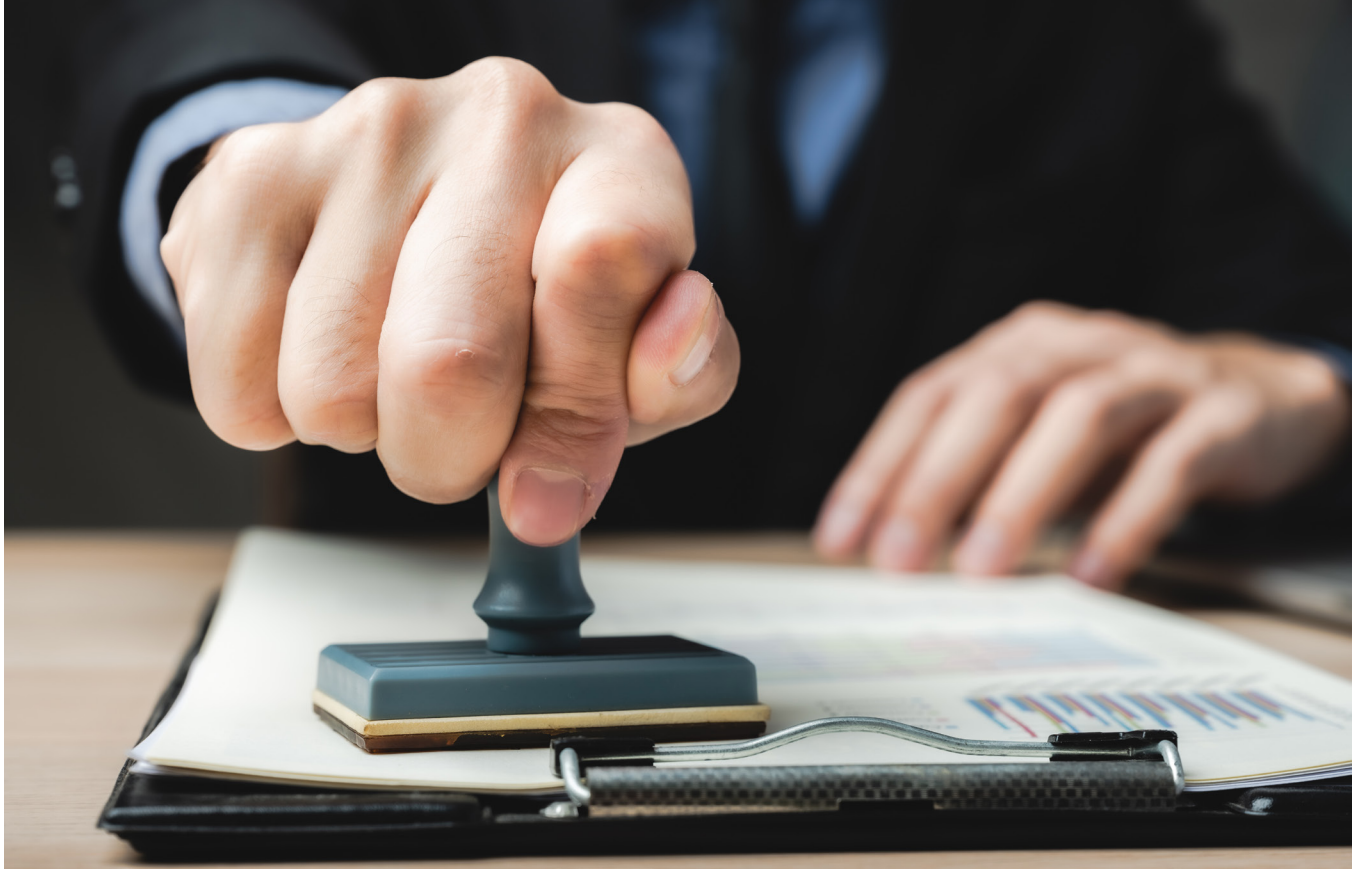
- Ensure that employees observe physical distancing while on the job and during paid breaks on the employer's property and employers must close and/or control access to common areas such as breakrooms, lobbies and lunchrooms.

Virginia employers are prohibited from discriminating or retaliating against an employee who wears his/her own personal protection equipment or who raises a reasonable concern about infection control related to COVID-19. Employers who fail to comply with this Standard are subject to fines up to $12,726 for serious violations and $127,254 for willful violations.

Any community association that has employees should consult with its legal counsel to ensure that the association complies with the Standard.



Susan Childers North is a partner with the law firm of Gordon & Rees, where she focuses her practice on employment law for an array of clients, including those in the community association industry. Gordon & Rees is a national law firm with over 1,000 attorneys in all 50 states, and Susan works out of the firm's Williamsburg office.



Understanding the Permitting Process

By **Lance Bellman**, *Levin Contracting*

When asked to write something describing the permit process in Hampton Roads the first thing that came to mind was that the article was going to be short and to the point, more of list of resources and instructions. Or it would need to be extremely lengthy for the following two reasons…first not one the seven cities share a process office, and secondly, no two processes are the same! In the interest of not boring you to tears, I choose the former. I have also complied a list of the online pages specifically designated for permitting from each of the seven cities. *(See next page)*

I have also listed a link to the Legislative Information Systems page for definitions related to all aspects of permitting in the State of Virginia. However, your local municipality will supersede and be charged with enforcement issues. This means you should follow the local codes and regulations even if you believe there may be a discrepancy between the two.

The guidelines & regulations for the building codes we use in Hampton Roads are administered through the Virginia Uniform Statewide Building Code (USBC), and its associated standards and regulations for industrialized construction. It is these guidelines that dictate the necessity for permitting and should not need to be referenced. However, you can view the guidelines online if you're interested in learning more

https://www.dhcd.virginia.gov/codes

In association work it is important to know that not all projects require a permit, obviously size and nature of the project will determine the necessity for a permit. In ALL cases the permitting process needs, by law, to be completed by the property owner or a licensed building professional. Example of this would be the contractor performing services, an engineer, or architect. A community manager should NOT be tasked with this, nor should they want to be. Failure to permit, or improper/ inadequate permits may cost a community in fines, stop workorders or worse having to redo something causing the loss of time and undo additional construction.

How long does it take to pull a permit? Again, each jurisdiction will vary, but the general rule of thumb is giving four to eight weeks in advance to be safe. I have seen simple single family home re-roof proposal take a

day, slightly longer for multi-unit associations. In the same community, for an asphalt parking lot replacement, almost three months because of some extenuating circumstances.

Permitting as a matter of public record requires that a copy of the permit shall be posted on the construction site for public inspection until the work is completed. Such posting shall include the street or lot number, if one has been assigned, clearly stating the nature of the work, and to be readable by the public. I personally always provide an electric-orange 'Sandwich' board with emergency equipment (fire extinguisher & medical kit), after-hours contact information and protective sleeves to house the necessary permits. Be sure your contractor does the same! - Shelf-life of a building permit…in many circumstances projects may be delayed due to weather or contractors scheduling conflicts, or even community request to delay as seen this time of year due to the holiday and having family and guest in town. Building permits are valid for 6 months from the date of "last activity", which includes completed inspections, amendments, and the issuance of associated permits. If the permit does expire an administrative fee of $57 is assessed to reinstate the permit. This timeline and cost may vary, again be sure to confirm with your local jurisdiction/municipality to confirm any information you may read here.

Cost of permits vary based on square footage of a project and/or cost of project stated in the contract between the HOA/COA & the licensed contractor.

With so many small differences, guidelines, regulations, and requirements I cannot stress enough to leave this in the hands of the construction professional tasked with obtaining the permit. The best way to determine whom that would be, is to ensure that the responsible party be named in the 'Scope of Work'. In a legal binding contract this would further help ensure, to the enforcement arm of your local jurisdiction, that your community did indeed take the necessary steps required to secure permits if for your project.

Having performed work in all the seven cities, it has been my overall experience that each city permit office has been rather helpful and the online options of acquiring permits it very up to date.

Best of luck to all in 2021, and please don't hesitate to contact personally if I can be of assistance!

Content creator Lance Bellman handles HOA/COA project management duties at Levin Contracting Inc., for their communities within Hampton Roads. He has been a trusted member of the SEVA-CAI community for over ten years. Lance has served on numerous committees, receiving several awards including 'Rising Star' and 'Newsmagazine Committee Volunteer of the Year'. When not in the field directing operations, he can be found facilitating community manager training events and attending training himself at manufacturers sponsored seminars around the country.

Online Resources

Chesapeake
https://www.cityofchesapeake.net/government/city-departments/departments/Department-of-Development-and-Permits/Building-Permits-and-Inspections.htm

Hampton
https://hampton.gov/2370/Online-Permits-Inspections-Center

Newport News
https://www.nnva.gov/453/Permit-Applications

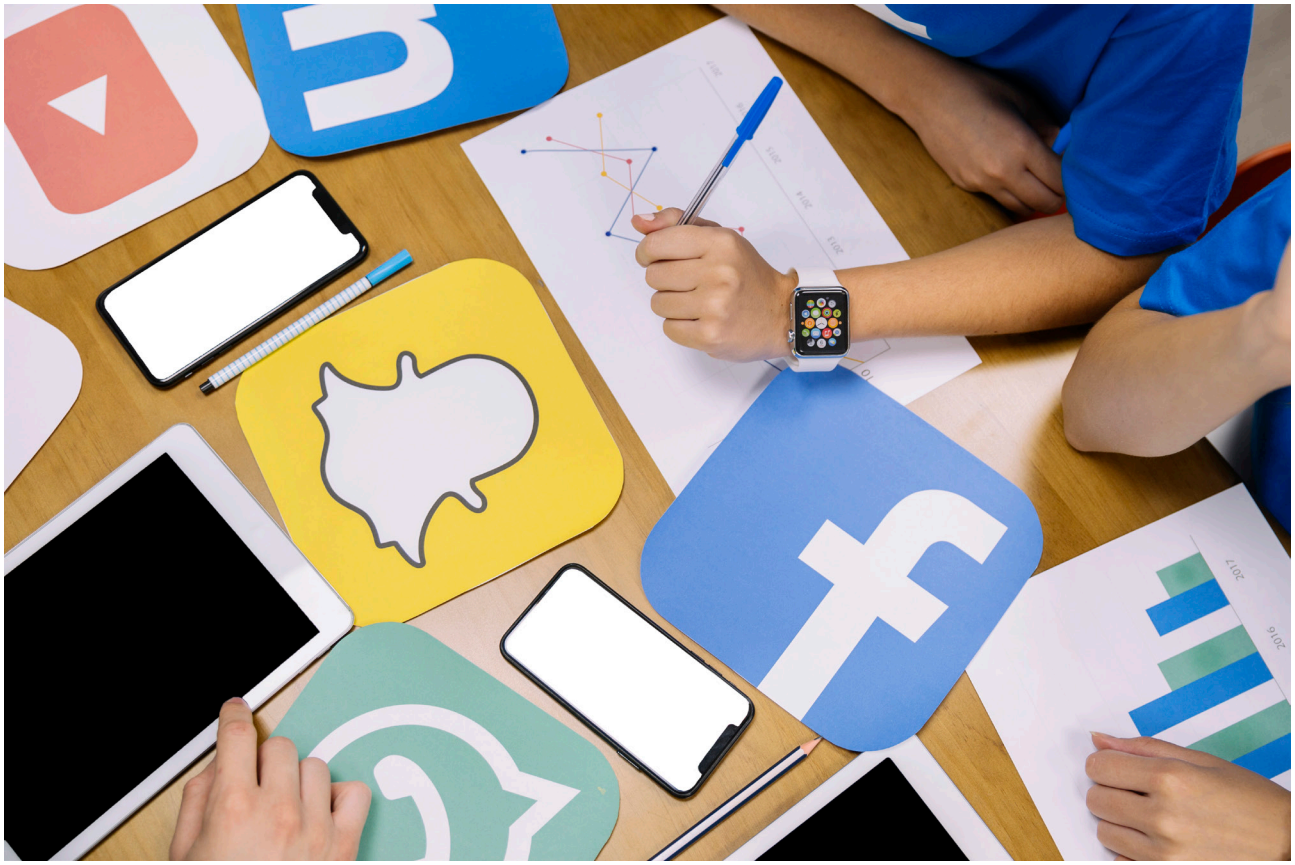
Norfolk
https://www.norfolk.gov/2799/Permits-and-Inspections

Portsmouth
https://www.portsmouthva.gov/313/Building-Permits-Inspections

Suffolk
http://www.suffolkva.us/407/Building-Permits

Virginia Beach
https://www.vbgov.com/government/departments/planning/permits-inspections/pages/default.aspx

Legislative Information Systems
https://law.lis.virginia.gov/admincode/title13/agency5/chapter63/section100/



Social Media Platforms for Associations

By **Tanya Gasser, CMCA®, AMS®,** *The Select Group, Inc., AAMC®*

There are many different social media platforms that may be utilized by community associations; Facebook, Twitter and Instagram to name a few. Before jumping in, take some time to consult legal counsel, and develop a strategy. Know the good, the bad and yes, even the ugly!

Social media can be a very effective and powerful tool used to communicate with association residents/owners, when used with predetermined guidelines. There are a multitude of items these platforms may be used for, such as posting community events, contract changes, community photos, club or committee meeting dates, and even maintenance updates. It is also a way to connect members of the association that share similar or like interests. Using social media platforms to communicate also has the potential to lower the community costs for routine mailings such as reminders and updates, provided it is permitted in the governing documents for the community. Social media can help owners/residents feel like they are an active participant in the community, and that their opinion is heard and matters.

While social media platforms can be positive for associations, they can also be a negative. What may be viewed as petty attacks between residents or members of the Board can become a real issue. Beware, everything done or said on social media is permanent, even if it's deleted. Posts have the potential to create harmful or hurtful situations between owners, residents, and Board members, resulting in anger and misinformation. It can be difficult for a negative post to result in a positive, and has the potential to push an owner to sell their beloved home, or cause a member of the Board of Directors to resign, with claims of defamation of character and/or harassment. Many residents share concerns that negativity may also have

an adverse effect on home values when the page or posts are open to others outside of the community. These are exactly the types of issues to avoid when considering a social media platform in an association setting.

How can associations address owners who create pages that are anti-association or appear to be an association owned or sanctioned page? The association may wish to copyright its legal name. This may help to prevent others from using the association's name online. However, if the Association finds that an Owner has arbitrarily set up their own page, that Owner may be asked in a positive manner to close the unofficial page and join in on the "official" association page. Should the Owner decline or refuse, it would then be a matter to consult legal counsel about, if the Board desires to further pursue. The end goal being the members of the community have a pleasant and positive experience with social media in their Association, right?

As discussed, social media can be a great added tool in communicating in an association; however, many association attorneys throughout the country suggest putting a communication/social media policy into place.

In considering such a policy, David Savitt, of KSN Law suggests five key things to keep in mind;

1. Pick a platform that makes sense for the community's needs; a single platform may be sufficient

2. Determine who can view the association's social media page; who has access, are they closed (private) or open to anyone

3. Determine who can use the association's social media account(s); who will manage comments and approve or deny posts

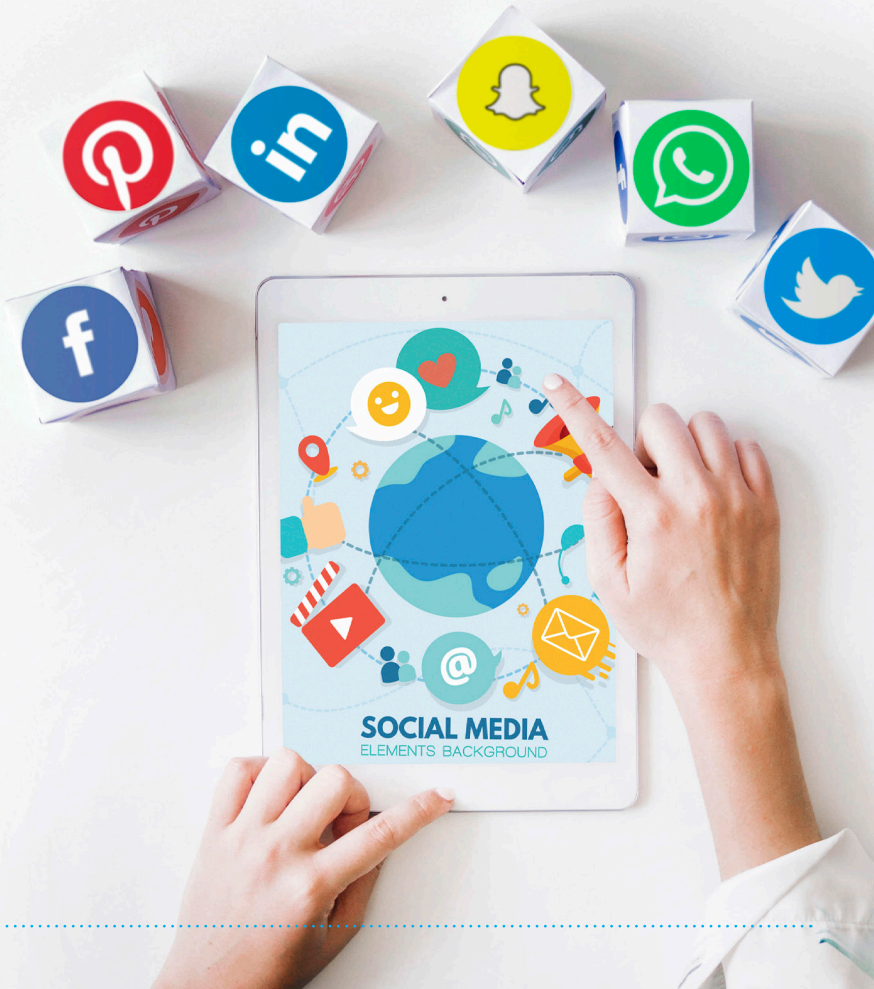
4. Determine the permissible content; may include direct links to community forms

5. Determine the types of prohibited content; delineate restrictions for use

When considering invoking such a policy, seek the advice and guidance from the association's qualified attorney to develop or review the policy prior to implementing.

The negative connotation of social media and associations raises some concerns. However, with proper parameters set in place from the beginning, and adequate follow through monitoring the information permitted to be posted, social media can be a substantial asset to the community as a whole.

Tanya Gasser is a community association manager with The Select Group, Inc. She has earned her CMCA and AMS designations through CAI, and has been an active member of several of the Chapter's committees.



Conservation & Sustainability

POLICY

The Community Associations Institute (CAI) endorses legislation that provides a fair and equitable foreclosure process by third party lenders that protect homeowners, property values, and the financial health of community associations.

CAI SPECIFICALLY ADVOCATES FOR AND ENDORSES:

Lien priority laws that protect and enhance the priority of unpaid assessments as related to other loans secured by lots and units in community associations. CAI endorses the lien-priority language in the Uniform Common Interest Ownership Act.

Foreclosure laws that require the prompt foreclosure of delinquent mortgages secured by homes in community associations and timely recordation of foreclosure deeds or, in the alternative, where the foreclosure is delayed, payment of association assessments by the lender.

Laws that require lenders to protect and maintain homes subject to foreclosure prior to foreclosure and during the foreclosure process if the loan is in default and the unit or lot owner has abandoned responsibility for maintenance and upkeep of the unit or lot.

Adoption and enforcement of regulations by Government-sponsored enterprises that require lenders and mortgage servicers to proactively maintain vacant homes.

POLICY

CAI supports environmental and energy efficiency policies that recognize and respect the governance and contractual obligations of community association residents as the best mechanism to enact sustainable environmental policies.

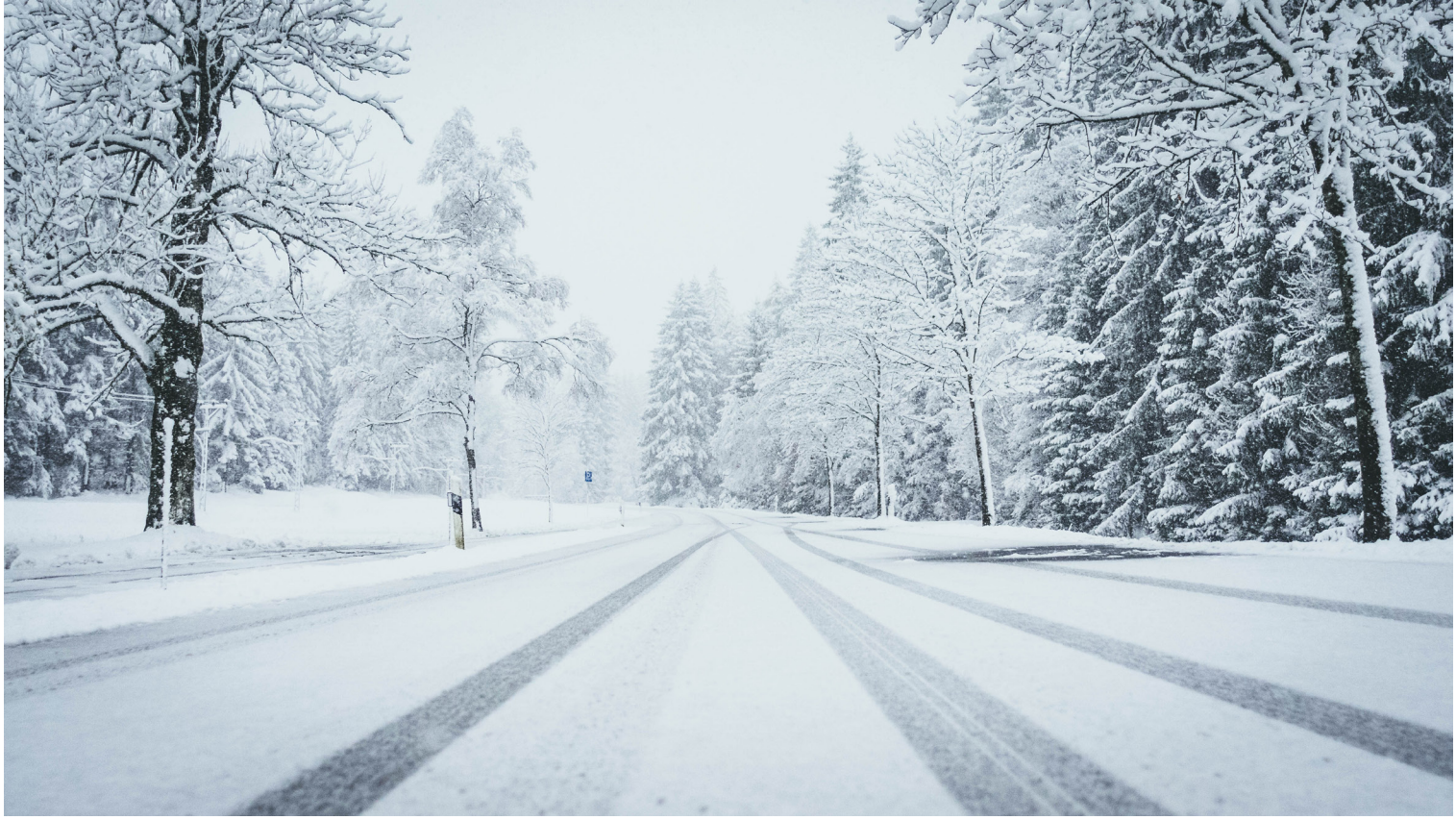
CAI supports efforts by state legislatures to empower community associations to build consensus-based solutions regarding environmental initiatives, and opposes government and interest group efforts to override community policy or deed restrictions on single interest issues.

BACKGROUND

Community associations are the outgrowth of smart land use planning. Community associations, which include condominiums, planned communities and cooperatives, represent a comprehensive approach to housing that encompasses individual lots or units as well as common areas such as parks, conservation/natural habitats and parks and recreational facilities. These amenities usually are supported and maintained by the residents of the community, enabling state and local authorities to focus their resources on other uses.

Conservation issues also benefit from the governance process within community associations. Deed restrictions, bylaws and rules provide a basis for implementation, enforcement and maintenance of policies and projects to address community concerns. This process provides a democratic forum for individuals in the community to collectively develop a range of solutions to meet the needs and values of the community. Fostering such diversity of approaches provides neighborhood-level laboratories to develop a range of sustainable solutions. Such local decision-making should be respected and incentivized.

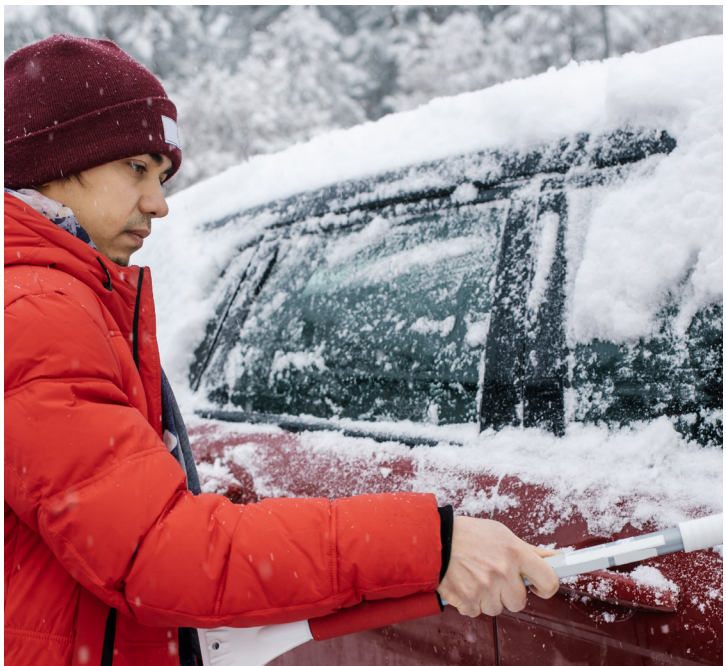
Adopted by the Board of Trustees, March 3, 2010



Snow & Ice Management

for Community Associations

By **Steve Ferguson,** *U.S. Lawns of Hampton Roads*



Community associations in regions affected by potentially severe winter weather should take care in choose the right landscape professional for the job. Selecting an experienced, trusted landscape professional can ease any winter concerns.

Choose a landscape professional who has all the necessary equipment and tools to safely care for a property. Make sure they can provide the expertise and that they have the experience to identify specific winter weather grounds care needs. Properly trained landscape professionals can provide peace of mind, as they track weather patterns and adjust maintenance strategies accordingly.

Items to be aware of when looking for a snow and Ice management provider:

1. Do they have experience?
2. Do they have the equipment needed for your property?
3. Do they have the man power to meet your needs?
4. Do they have the proper insurances?
5. Do they have a training?
6. Systems in place to accurately bill for the work performed?
7. Assess tracking systems

Now we can go on and on about the details but let's focus in on some that stand out.

Insurances

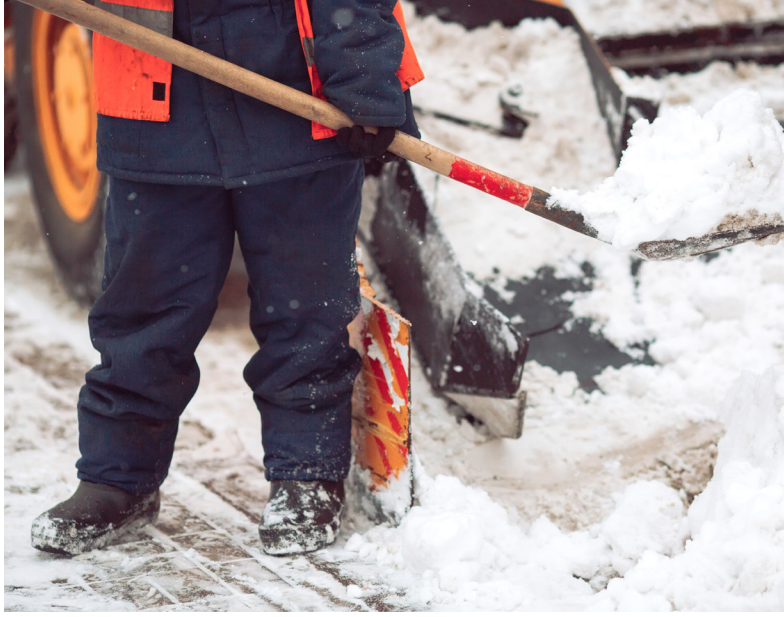
Most folks don't know that insurance is a different animal when it comes to snow mitigation. First you want to verify that the provider has commercial auto, workman's comp and general liability insurances. for any services provided on your property. As a professional snow management company they should have snow liability insurance.

Second, item that we are going to detail is assess tracking. How is the snow provider track and disperse thier snow fleet. Are you a senior community? Is there gated assess? Do you have onsite storage for materials?

Contract Early For Snow & Ice Management Services

By contracting early for snow and ice management services early (in July or August), you're giving your landscape management partner the opportunity to become familiar with the lay of the land in the community. This is critical for accurately safeguarding the hardscape and softscape elements against damage when a fresh blanket of snow conceals important features.

Notice we are referencing "snow and ice management," not "snow removal." That's because typically snow is not removed from a community, but relocated to a safe out-of-the-way area, and left there to melt.



There are a number of important services that should be included in your snow and ice management contract:

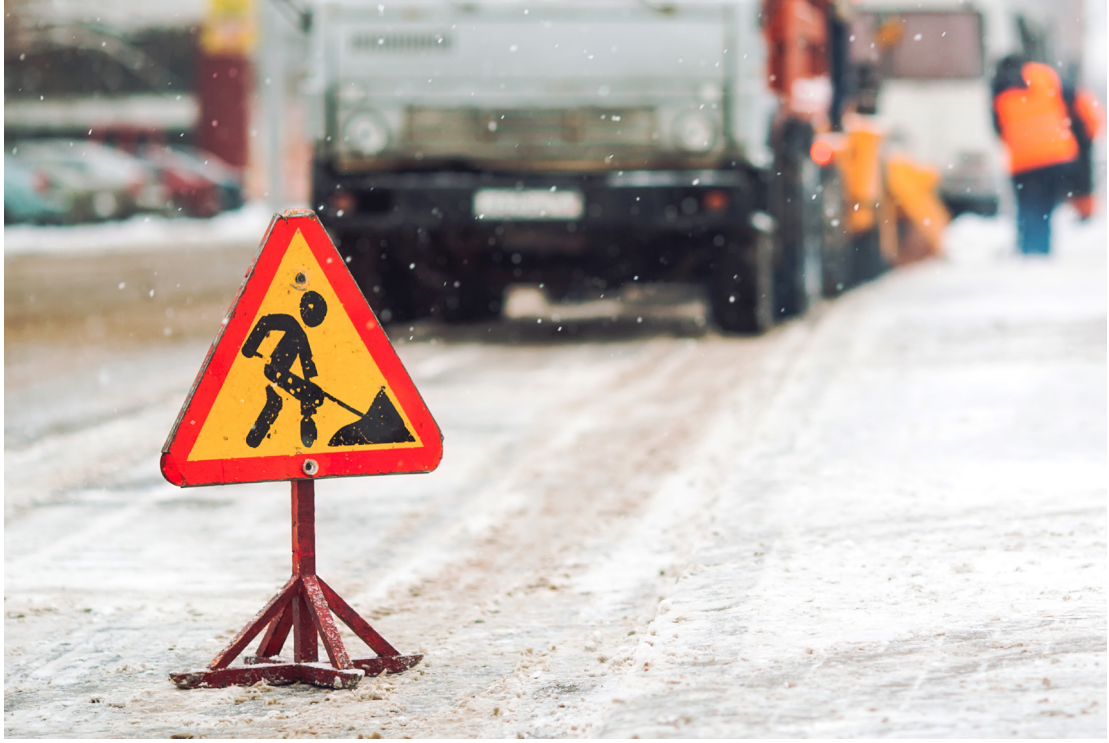
- Snow plowing entryways, streets and parking lots
- Shoveling snow from sidewalks, common areas, outdoor stairs, and outside the entryways
- Application of ice prevention treatments to surfaces, which could include brine, salt, sand, or gravel, depending upon the temperature and type of expected precipitation
- Weather monitoring, to ensure your snow and ice management partner is staying on top of things
- 24/7, 365-day response

Slip Prevention

Above and beyond contracting for professional snow and ice management services, there are steps every community should consider including for themselves, as part of a winter weather preparedness plan to prevent people from slipping and falling on wet or icy surfaces.

- Install warning signs
- Place weatherproof mats in entryway of clubhouse or other building and on surfaces that may become hazardous when wet
- Keep a snow shovel and ice melt on hand
- Make sure parking lots, driveways and sidewalks are all well lighted
- Ensure proper drainage is in place to prevent unnecessary ice buildup in key areas
- Consider investing in an insurance policy to help mitigate the potential impact of a major winter storm

continued on page 25...



Ice Is Not Nice

Ice is potentially the most dangerous winter element and can pose a serious threat for both pedestrians and drivers. It is extremely important to keep ice from accumulating on walkways and driveways in order to reduce the risk of an accident. Ice is also one of the most difficult winter weather elements to manage, and it is easiest to manage it before it forms. Failure to pre-treat areas susceptible to ice accumulation can result in countless man hours spent on difficult and frequently ineffective manual cleanup.

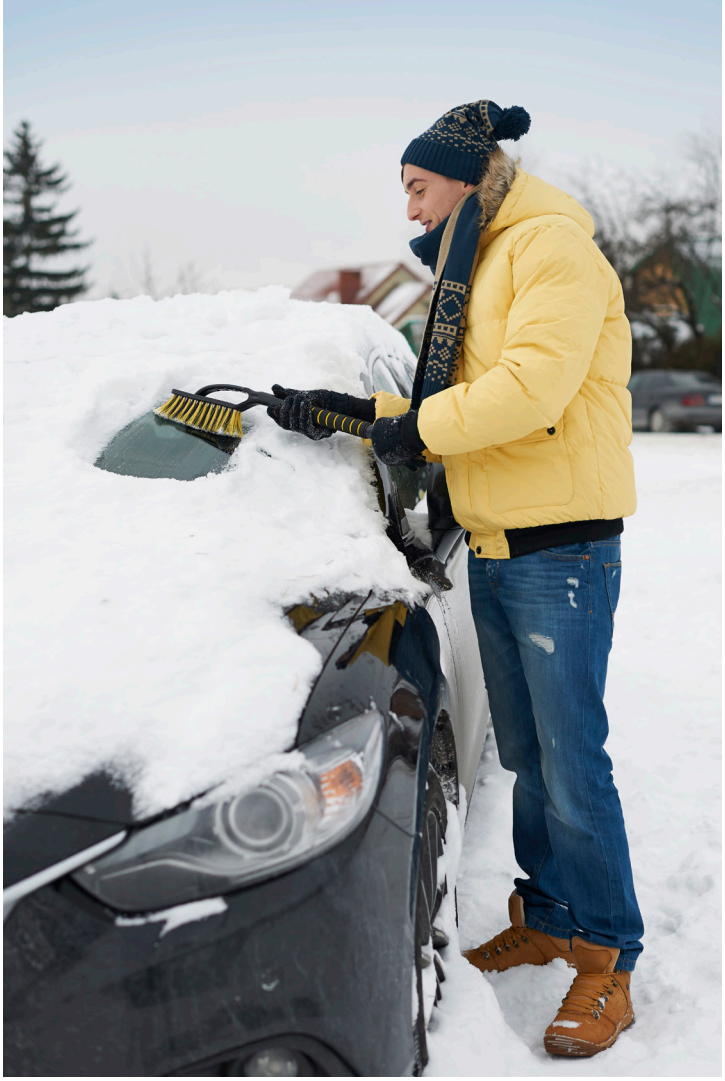
The best way to manage ice is by pre-treating. This can also be done after ice forms, but it is not nearly as effective. It is quite common for commercial and private properties to use melting agents such as calcium chloride, salt or salt-based solutions to prevent the forming of ice on walkways and driveways. These materials effectively soften ice, breaking the bonds between the ice and pavement, which then makes its removal easier. Ice can still be treated after it forms, but the effort to remove it will be greater. Once a melting agent is applied to ice coverage, sidewalks and walkways will need to be scraped either by hand or with an ice shovel. Melting agents are not, however, necessary in every case. If the temperature is above freezing, allowing ice to melt for a short time before removing it will lessen the effort needed to break it free from the hardscape. It is imperative that all residents are made aware of any ice hazard so the proper caution can be exercised.

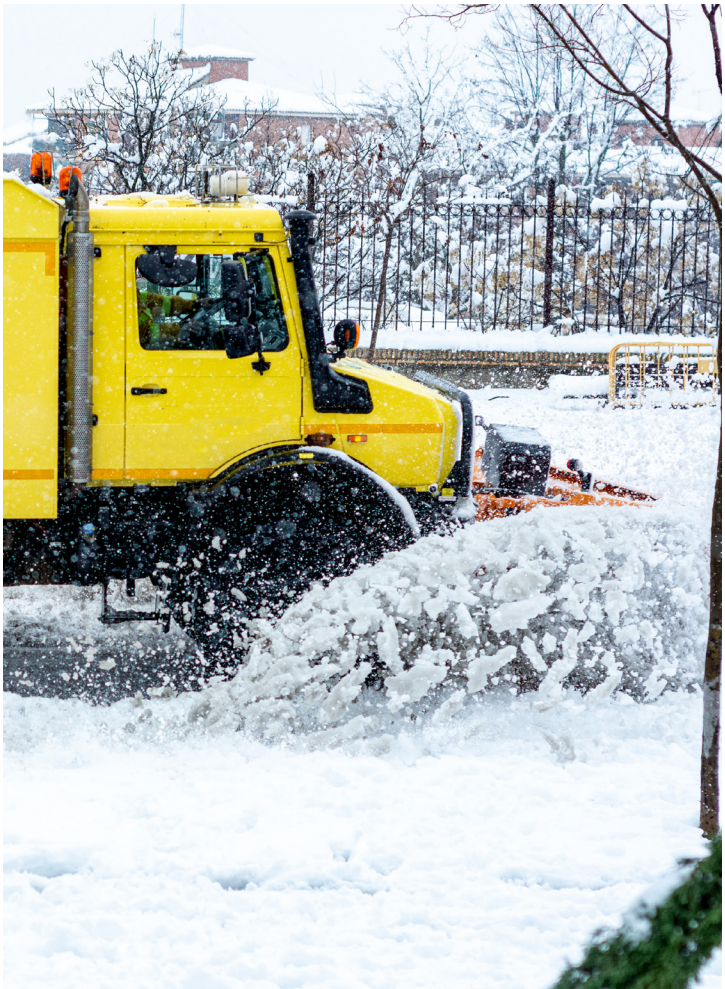
As deicing and ice management often involves many types of pavement such as asphalt, concrete, or pavers, it is important to select the right product. Some solutions contain types of salt that can be harmful to cement, animals or grass. Other products can be harmful to water supplies if absorbed into the soil or allowed to run off into sewers or drainage systems.

There are a number of commonly used products on the market for use in deicing. The most widely available of these products, sodium chloride solutions, are often the least expensive. Unfortunately, these pure rock salt solutions can harm plant life and mar cement if left for too long on ground surfaces. Potassium chloride and calcium chloride can also be used to soften ice and make it easier to clear. These options are usually more expensive than sodium chloride but cause less damage to ground areas and may melt ice coverage quicker than pure sodium chloride.

More effective and less toxic to plant life, magnesium chloride solutions are the latest in ice management. And unlike solutions containing urea, magnesium chloride solutions do not promote unhealthy growth in the winter months. Able to melt ice in contact with cement in temperatures as low as -22 degrees Fahrenheit, magnesium chloride is extremely useful in pre-treatment as well as removing ice after it has already formed. Unlike sodium chloride, solutions of magnesium chloride do not leave a powder trace behind after they have dissolved.

Regardless of which methods of snow management and deicing are chosen for an area, it is sometimes not enough to keep walkways safe. In times of colder weather where the ground is continually freezing, the use of extra measures may be required in high traffic





areas. While it is always a good idea to break up and remove ice, placing a layer of sand or gravel over areas of ice can help prevent slip and fall accidents by adding traction. This technique can also help prevent the formation of more ice buildup as it does not allow ice to make contact with cement surfaces. It is also important to keep residents notified of any areas that are deemed unsafe or that may cause them any problems with getting around the community.

Snow And Ice Management Contract Options

There are different contract options offered by most snow and ice removal contractors, so you will need to decide which will work best for your community:

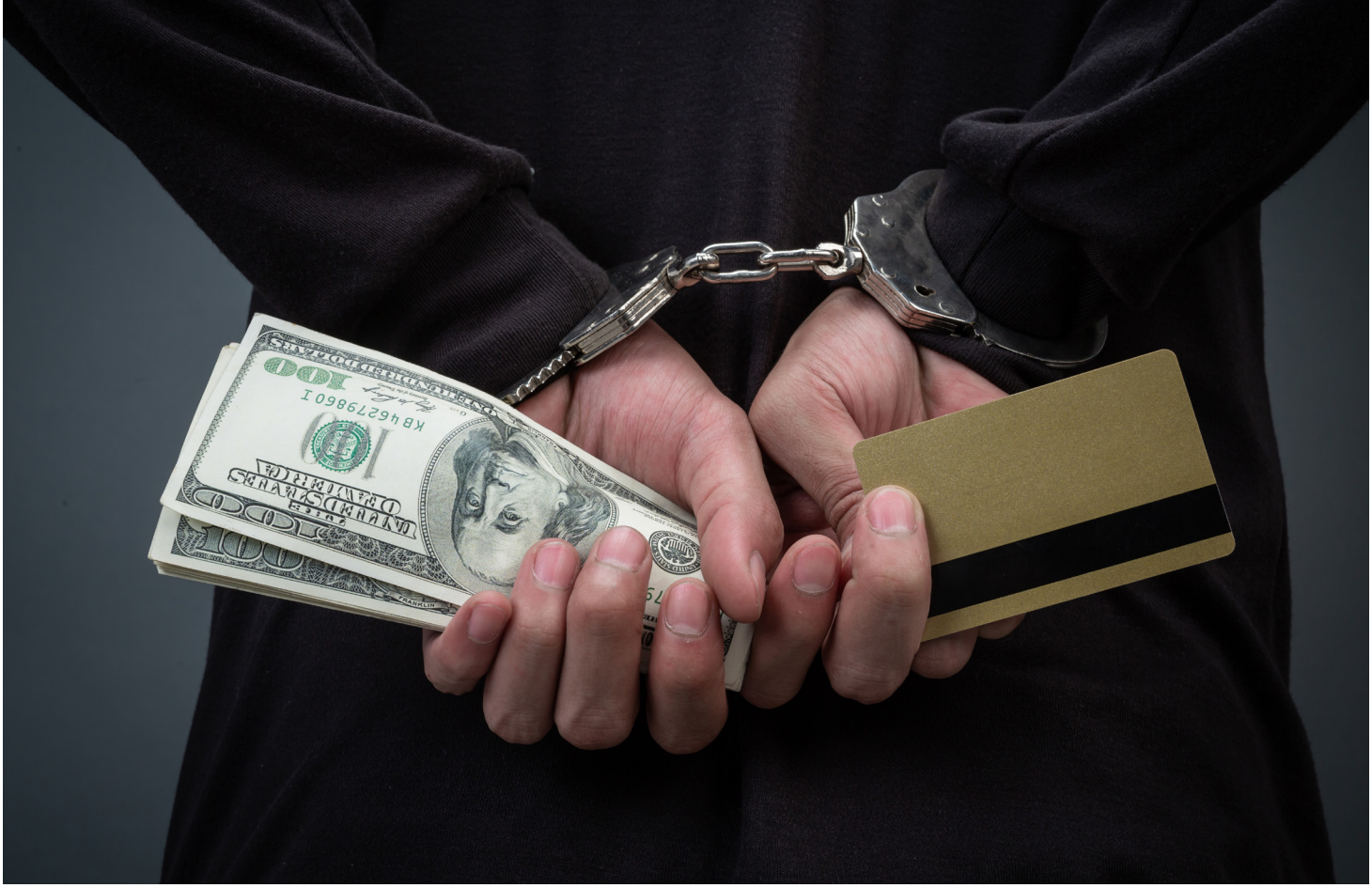
Per Event: Pay for services per storm event, at a rate based on the total amount of accumulation.

Per Service: This option will bill each time plowing / shoveling / treatment application services are performed.

Per Season: With this option, there is a fixed cost for snow and ice management services that is paid throughout the season. This is a good option for communities budgeting for the year ahead.

If this seems like a lot to consider, the bottom line is just to be prepared ahead of time. Discuss a plan for winter services as early as the summer. And certainly, the best way to ensure the use of proper materials, techniques and tools for snow and ice management in every region of the country for a community is by leaving it to a landscape professional.

Steve Ferguson is Vice-President and Owner at U.S. Lawns-Hampton Roads. He holds seven certificates from the state in the green industry and also holds a Virginia Paramedic certification. Steve has been an active member of SEVA-CAI since 2005.



Fidelity/Crime Coverages

Is your community association vulnerable to financial crimes?

By **Connie E. Phillips, CIC, EBP, CIRMS,** *Connie Phillips Insurance Financial*

What would happen to your association in the event of fraud, theft, or embezzlement? Your association leaders/board are volunteers and responsible for protecting the association assets from fraud, theft, or embezzlement.

Every association is looking to protect their funds from theft and other acts committed internally by board members and management companies and by outside criminal acts. It is no wonder that you can be confused when deciding on the Fidelity Bond Options available for your association. The insurance industry also creates confusion by referring to this coverage by several different names: Employee Dishonesty, Employee Theft, Fidelity Bond Insurance, Fidelity/Crime Insurance, and Crime.

The proper fidelity/crime coverage with all the agreements will extend to cover loss of money thru false pretense, phishing, social engineering, hacking of bank account and wire transfer fraud.

Your association may need to comply with FHA Guidelines, the Virginia Condominium Act, and the Virginia Property Owners Act, not to mention the fidelity requirements in your governing documents. These will require the Association to maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the Association against losses resulting from theft or dishonesty committed by the directors, officers, or persons employed by the Association. Be sure to verify the property management firm is defined as an employee under the bond. This usually needs an endorsement attached to the policy.

How much coverage do you need? How do you calculate the amount needed to satisfy your fidelity bond/insurance requirement? The formula used is the total of the amount of reserve balances of the association plus one-fourth of the aggregate annual assessment of the association.

The bond should be issued based on that calculation or the lesser of $1 million in Virginia.

Outlined below are the various options that can be included in fidelity/crime insurance:

1. Employee Dishonesty/Theft - This applies to employee's theft and embezzling funds, which can include employee forgery or alteration. Employees can steal property as well as funds. Typically, these types of losses are embezzlements of money occurring over long periods of time. Be sure to have the definition of "employee" endorsed to include directors, officers, volunteers, and the management company as a designated agent under the policy.

2. Forgery or Alteration - Forgery or Alteration of your own documents, such as checks where a third party might steal from the mail or your office.

3. Inside the Premises - *Theft of Money and Securities* - Does your client have an exposure to burglary, robbery, or destruction on their premises or at their bank's premises? *Example:* The monthly assessments are stolen from inside the organization's premises or while waiting in line to make a deposit at the bank.

4. Inside the Premises - *Robbery or Safe Burglary of Other Property*
This is rarely needed because property theft should be covered in the Property Policy. *Example:* Damage to the premises occurred during a robbery. There is damage to the premises and the safe holding the monthly assessment checks.

5. Outside the Premises – This protects money, securities or tangible property for theft, disappearance, or destruction while off premises in the care of the Insured. *Example:* While transporting Association funds, a courier gets robbed and the damages include $5,000 that belongs to the Association.

6. Computer Fraud and Social Engineering Fraud and Fraudulent Impersonation - The use of any computer used by a third party to obtain money, securities or other property from your premises or account. Social Engineering means the intentional misleading of an employee through the use of electronic, fax, telephone or written instruction that misleads the employee to believe the information is true. *Example:* An employee of a vendor utilized by the Insured fraudulently gained access to the Insured's computer and changed the bank routing number from the vendor to the employee's personal bank routing number, causing a large sum of money to be transferred directly to the employee instead of to the vendor. *Social engineering claim example:* The treasurer of an association receives an email that purports to be from a vendor requesting they transfer funds from a trust account for work to be performed. The treasurer transfers the funds as requested. Later it is discovered a thief was impersonating the vendor and the funds were transferred to the thief's account.

7. Funds Transfer Fraud - Almost any association is susceptible to a third-party gaining access to transfer money. The third party assumes the Insured's identity to make the transfer. It can be through computer hacking or other methods of transfer. Imagine a third party using the micro-coding at the bottom of your client's checks to make telephone purchases.

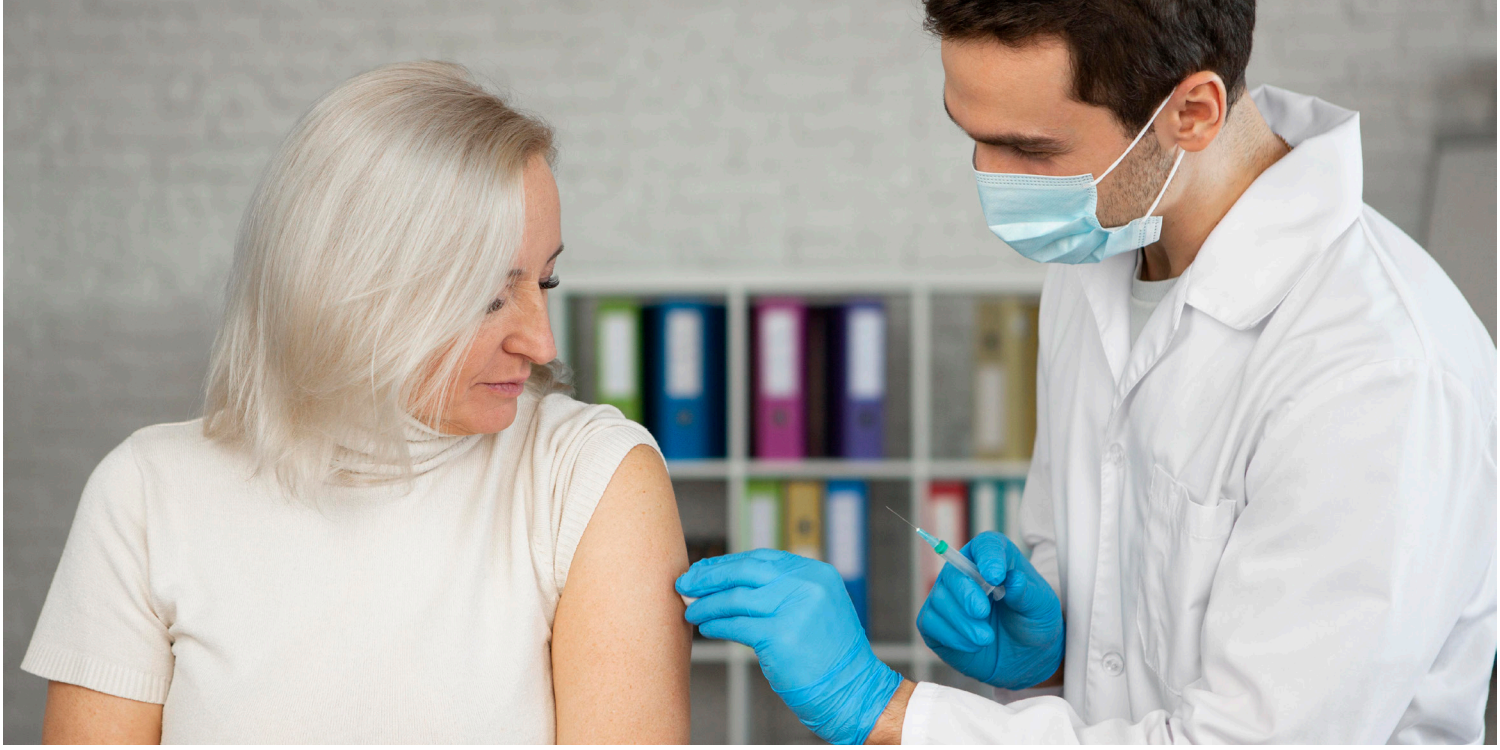
8. Money Orders and Counterfeit Money - Counterfeit money or checks that are intended to deceive and be taken as genuine. This pays when the Insured accepts bad U.S. issued money orders or counterfeit money in exchange for merchandise, money, or services. *Example:* 6 months assessments in arrears totaling $5,000 are paid with a counterfeit money order and the Association unknowingly accepts it.

The fidelity /crime coverage is there to protect the associations funds. Do you have a website? Use Facebook? Or do you accept credit cards or EFT transfers for the collection of funds? Do you use a bank credit card system? You should also consider a cyber security liability and data breach policy. Do not confuse the coverage offered by a cyber endorsement that has been added to your general liability or directors and officer's liability (D&O) policy with a stand-alone cyber security liability policy. The cyber security liability policy extends to cover unauthorized use of technology, computer programs or misplaced personally identifiable information (PII)and media liability. The data breach response services include notification expenses of the data breach, credit monitoring expenses, restoration expenses, cyber extortion and ransomware, forensic expenses, compliance, and regulatory fees.

This is a brief explanation and overview of the various agreements in a Fidelity Bond. It is meant only as a general understanding of the bond coverages and should not be construed as a legal representation of the bond coverages. Please refer to your specific bond contract for details on coverages, conditions, and exclusions.

Connie is President of Connie Phillips Insurance. Connie has a Certified Insurance Counselor (CIC) and a Community Insurance and Risk Management Specialist (CIRMS). She is also a Community Associations Institute Educated Business Partner (EBP). Connie can be reached at 757-761-7757, or cpi@insurance-financial.net

This article is Part 3 of a 4 Part series that will run in upcoming issues of *Currents*. **Look for the conclusion in the next issue!**



COVID-19 Vaccines and HOAs: *What You Need to Know*

By **Laura Otto**, *HOAResources.com*

As we approach the one-year mark of social distancing and shutdowns due to the COVID-19 pandemic, vaccine rollouts are taking place across the country. We asked two community association law attorneys to answer frequently asked questions from board members and homeowners association residents:

Can we require proof of vaccination from residents?

Generally, community associations may not require residents to provide medical information. An association cannot compel a resident to show proof of a COVID-19 vaccine any more than it can require proof of an annual flu vaccine, says David W. Kaman, partner at Ohio law firm Kaman & Cusimano and president of the 2021 Board of Governors of CAI's College of Community Association Lawyers (CCAL).

"An association with employees, however, may be able to require that the employees show proof of obtaining the vaccine if it becomes a requirement of employment," he says. Associations should review this matter with their legal counsel prior to making it a requirement.

An association also may decide to work with a health care provider to distribute the vaccines when they become available to the broader population. "The association must make it clear that the health care provider, not the association, is providing, distributing, and ultimately responsible for the vaccine and any medical information," Kaman notes.

Nancy T. Polomis, an attorney with Hellmuth & Johnson in Minneapolis, has one association that plans to bring a medical professional to administer the vaccine as a convenience to their residents, but also so that they don't have to go out of the building if that's going to be a problem for them. "That hasn't kicked in yet, because the vaccine applications are not at the point where they're readily available," she says.

"A lot of times it's more a matter of being proactive and making it easy for residents to get their vaccine, which in turn helps the entire community," she explains. Polomis encourages associations to update residents via email or a newsletter as the vaccine becomes widely available, especially if the community or the locality will be administering vaccines. "But of course, no one will force anyone to be vaccinated," she adds.

"Aside from whatever opposition someone might have to a vaccine, there are also other medical reasons why people would not get them," says Polomis. "Trying to impose a requirement that people provide proof of vaccination is ill advised, and probably would lead to very bad consequences for the association."

How was the COVID-19 vaccine developed, authorized and manufactured

Vaccines have saved the lives of thousands of Virginians through the years. Now, scientists and researchers have worked to bring us a new vaccine to help in the fight against COVID-19.

EVERY vaccine, no matter what it's for, goes through multiple steps. **For the COVID-19 vaccine, NO STEPS were skipped.** The financial part of the process was sped up to help us fight this virus.

It Starts with Lab Testing

Scientists and researchers work on formulas that will become a vaccine. Before it's ever given to people, it goes through extensive lab testing.

Next Stop is Clinical Trials

Clinical trials test safety, dosage and effectiveness. Vaccines have to pass three phases in this step before they can be offered to the general public. The FDA* sets the rules for this step.

Last, Authorization and Production

The FDA reviews the data from the trials and gives the go ahead for distribution. The vaccine is made in large quantities for distribution.

A vaccine only gets FDA authorization if it tests both SAFE and EFFECTIVE

Clinical Trials

Volunteers around the country offer to get the vaccine so scientists and medical professionals can see how they are affected.

PHASE 1: Safety

- Evaluate safety and identify any common reactions
- 20 – 100 volunteers

PHASE 2: Effectiveness

- Gather more information on safety, efficacy, dosage and reactions
- Several hundreds of volunteers

PHASE 3: Safety + Effectiveness

- Compare reactions of people who got the vaccine versus those who have not
- Thousands of volunteers

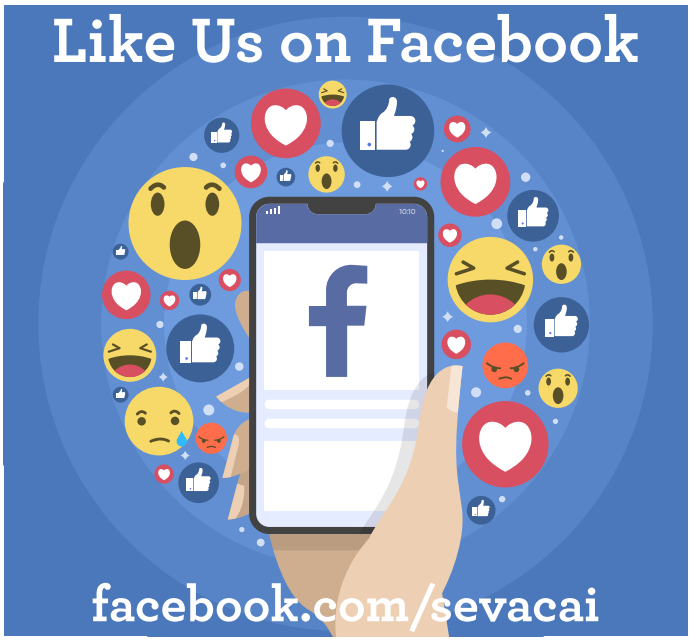
***Who is the FDA? What does it do?**

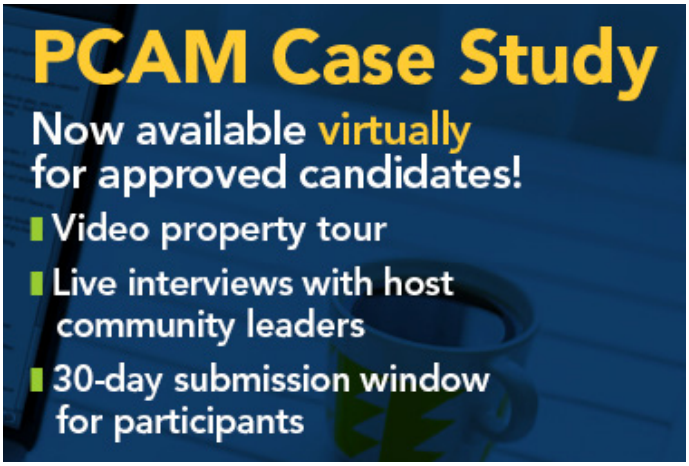
A non-political group, the Food and Drug Administration (FDA) uses oversight and regulation to ensure vaccine quality, safety and effectiveness — helping to facilitate the timely development of COVID-19 vaccines.

For more information about how vaccines are created, tested and distributed, visit **vdh.virginia.gov/covid-19-vaccine** or call 877-ASK-VDH3.

VDH VIRGINIA DEPARTMENT OF HEALTH

upcoming events





save the date

Community Conversations Live
COVID-19, Mental Health and Our Communities
February 17, 2021
Virtual Education

CA Day ~~2020~~ 2021:
Salute to Service
April 5-18, 2021
Virtual Education

2021 CAI Annual Conference:
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> No one is rich enough to do without a neighbor.
> - Danish Proverb

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