

# COMMUNITY ASSOCIATION CONNECTION

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WESTERN NEW YORK  
CHAPTER

**community**  
ASSOCIATIONS INSTITUTE

P.O. Box 764 • East Rochester, NY 14445

Our mission is to provide resources and support to community association members, volunteers, and professionals through education, unified advocacy and leadership development.



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## COMMUNITY ASSOCIATION CONNECTION

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# PRESIDENT'S MESSAGE



## Members Are Our Top Priority!

- Barbara Perdue

I hope everyone is enjoying their summer. As we are now half-way through 2019, this is a great time to reflect on the past six months and review our focus for the remainder of the year.

Our goals include:

- Empowering our members through education and advocacy.
- Creating partnerships and developing member involvement within our chapter.
- Improving our industry narrative by delivering updated topics across different platforms that create interest throughout upstate New York.
- Increasing chapter membership.

How have we done? By continuing to offer relevant classes, such as the Law Panel in June, we have helped to educate our members in areas in which they have questions. Reaching out to vendors and property management firms helps establish new partnerships we can offer to our members. Our Board develops ideas for programming and continuing education by having members fill out focus cards at events, and asking property managers to survey their community association members.

One area I would like to see more focus on in the coming months is chapter membership. As a member, you know the value in the resources and programming CAI provides. We need your help to spread the word and ensure the future of our organization. The progression of our industry truly lies within our professional and community association volunteer members. Share your passion for CAI by recruiting a new member and help us to reach our 2019 goals.

Thank you!

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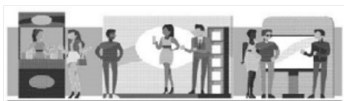
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### ROCHESTER 8th ANNUAL TRADE SHOW

October 24, 2019

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# Barbecue and Grilling Safety

by Bonnie Gionta, CIC

## BEFORE BARBECUING

- Check your grill thoroughly for leaks, cracking or brittleness before using it.
- Clean out the tubes that lead into the burner.
- Make sure the grill is at least **10 feet** away from your house, garage, or trees.
- Store and use your grill on a large flat surface that cannot burn (i.e. - concrete or asphalt).
- Don't use grills in a garage, porch, and deck, or on top of anything that can catch on fire.
- Keep children **away** from fires and grills.
- Have a fire extinguisher, a garden hose attached to a water supply, or at least 16-quarts of water close by in case of a fire.

## DURING BARBECUING

- Don't wear loose clothing that might catch fire.
- Use long handled barbecue tools and/or flame resistant mitts.
- Keep alcoholic beverages away from the grill, they are flammable!
- Never leave the grill unattended.

## AFTER BARBECUING

- Follow the grill manufacturer's cleaning and storing instructions.
- Keep your grill clean and free of grease buildup that may lead to a fire.
- Never store liquid or pressurized fuels inside your home and/or near any possible sources of flame.

## IN CASE OF A BARBECUE FIRE

- For PROPANE Grills - turn off the burners.
- For CHARCOAL Grills - close the grill lid. Disconnect the power to ELECTRIC Grills.

## IN CASE OF A BARBECUE FIRE contd.

- For PROPANE Grills - if you can safely reach the tank valve, shut it off.
- If the fire involves the tank, leave it alone, evacuate the area and call the fire department (911).
- If there is any type of fire that either threatens your personal safety or endangers property, ALWAYS DIAL 911.
- **NEVER attempt to extinguish a grease fire with water.** It will only cause the flames to flare up.
- Use an approved portable fire extinguisher. If you don't have a fire extinguisher on hand use some baking soda it will also work.

## PROPANE GRILLS

- Check the tubes leading to the burner regularly for blockages. Check with your specific grill manufacturer's instructions.
- Check for leaks EVERY TIME you replace the cylinder. Pour soapy solution over the connections and if bubbles begin to form, there is a leak.
- If there is a leak, turn off the grill IMMEDIATELY and have it fixed. Do **NOT** use the grill until the leak is fixed.
- Make sure connections are secure BEFORE turning on the gas.
- Never start a propane grill with the lid closed. Gas can accumulate and when the grill is ignited may cause an explosion.
- Only get propane from approved compressed gas suppliers.
- Before getting a propane cylinder filled, check for any damages to it.
- Never store propane cylinders indoors or near any heat source.
- Never transport or store propane cylinders in the trunk of your automobile.
- Open the lid and allow the propane to vent before attempting to light

## PROPANE GRILLS cont.

- If your burners are beginning to corrode, **change them!**
- ALWAYS shut off the propane fuel at the grill and at the bottle after you have finished barbecuing.

## CHARCOAL GRILLS

- Due to the production of carbon monoxide when charcoal is burned, charcoal grills should **not** be used inside homes, vehicles, tents, or campers. Carbon monoxide is odorless and colorless, you will not be alerted to the danger until it is too late.
- Never use any flammable liquid other than barbecue starter fluid to start a charcoal barbecue.
- Use the starter fluid sparingly and never put it on an open flame. The flame can easily flashback along the fluid's path to the container in your hands.
- Remove the charcoal ashes from the grill, place them in a **metal** container with a tight-fitting metal lid, and mix with water. Set aside for several days.
- Always soak coals with water after cooking; they retain their heat for long periods of time.

## REMEMBER!

- Never use a propane barbecue grill on a balcony, terrace or roof. It is both dangerous and illegal.
- Propane barbecue grills and no more than two (2) 20-pound propane tanks are allowed on the grounds of a one or two-family home.
- Only use a charcoal barbecue on a balcony or terrace if there is a ten foot clearance from the building and there is an immediate source of water (garden hose or four (4) gallon pail of water).

# LEGAL CORNER

## Fiduciary Duty

by Ronald S. Shubert, Esq.



### QUESTION

I live in a Condominium Association and was wondering what duty the Board of Managers owes to the Owners? Also, can a Board Member be removed?

### ANSWER

The duty is called a “fiduciary duty” which arises out of a relationship in which one person or entity (the Board) is entrusted to control the decisions or interests of another (the Owners). The Board of Managers of a Condominium exercises control over the affairs of the Owners and based on this special relationship the Board of Managers owes a fiduciary duty to the Owners.

Simply put, the Board must perform its duties in good faith and in the best interest of the Owners and owe to the Owners their undivided loyalty. This standard is breached when a Board Member acts in his/her own interest.

Accordingly, a Board Member must remain informed of the Association affairs at all times; attend and participate in all meetings and be prepared for the meetings; be knowledgeable about the Declaration, Bylaws, Rules and Regulations; ask for professional assistance in situations where required; at all times advise the Board of conflicts of interest. When faced with conflicts of interest the Board Members should disclose the conflict and abstain from voting.

Some examples of breach of fiduciary duty are failure to file a lawsuit before the statute of limitations expires; failure to properly maintain the property; failure to give notice to the insurance carrier when an accident occurs and failure to properly fund reserves. If a Director doubts whether he or she is acting properly, he or she should ask themselves the following question: “Would a prudent person in a similar situation after making reasonable inquiry make the same decision?” If the answer is yes, then there is no self-dealing conflict of interest, and the Director is acting properly.

As to the removal of a Board Member, the Bylaws of the Condominium (or Association) provide a procedure by which a Board Member can be removed for cause or without cause by a vote of the community. Typically, cause is defined as behavior which is not in the best interests of the Condominium, conflict of interest, etc. Before a Board Member can be removed, however, they have a right to be heard. Removal is a drastic measure but has been used by communities in the past.

In the end, it is up to the community to elect members to the Board who are competent, do not have hidden agendas, and are acting in the best interest of the entire community.

*Ronald S. Shubert, Esq. is a partner in the law firm of Phillips Lytle LLP. He represents over 400 Community Associations in Upstate New York State.*



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## NY's Highest Court Upholds Standing Authorizations to Challenge Condo Tax Assessments in Matter of Eastbrooke Condominium v Ainsworth Court of Appeals of New York, March 28, 2019, Decided

by Corey A. Auerbach, Esq.

Any property owner in New York who believes their real property tax assessment is excessive, unequal or unlawful may challenge that assessment and, if dissatisfied at the conclusion of the grievance process, seek judicial redress pursuant to New York's Real Property Tax Law.

To reduce the number of special proceedings and to permit the sharing of costs, § 339-y(4) of the "Condominium Act" (Article 9-B of the Real Property Law) provides that the board of managers of a condominium may act as an agent of each unit owner who has given written authorization to seek administrative and judicial review of an assessment. The same statute further provides that the board may also retain legal counsel on behalf of all unit owners for which it is acting as agent and charge all such unit owners a pro rata share of expenses, disbursements and legal fees.

One such challenge by a WNY Condominium made its way all the up to the New York State Court of Appeals, clarifying the breadth of agency authorization...for now.

### Background

At issue were various tax assessments made with respect to the Eastbrooke Condominiums property in the Town of Brighton, Monroe County, comprising 402 individually-owned units and a communal recreational area. The condominium units were assessed for tax years including 2008, 2009, 2010, and 2011.

During each of those tax years, the condominium board of managers (hereinafter, the "Board"), acting as the agent for individual owners, filed a grievance complaint with the Town's Assessor and the Board of Assessment Review (hereinafter the "Town") with respect to those assessments. The Town denied the respective complaints, leading the Board to commence these proceedings.

Purportedly acting as agent for each of the 402 unit owners, the Board's attorney filed one petition for each of those tax years, alleging that the Town had incorrectly assessed the condominium units. The attorney sent annual letters to each owner explaining the tax assessment process and affording the unit owner the opportunity to participate in a challenge to the Town's tax assessments. Each of those letters included an authorization containing this language:

"This authorization shall apply to all pending and future proceedings for tax assessment review and reduction relating to the [Eastbrooke Condominiums], unless revoked pursuant to the parties' representation agreement."

In response, the Town sought a determination that only those owners who had subscribed to an authorization *in each of the subject tax years* had a right to receive a refund for each of those years. The trial court agreed, ruling that only those who signed a separate authorization for each of the separate tax years in question were entitled to a refund.

The Board appealed and the Appellate Court affirmed, reasoning "that unit owners are required to give an authorization for each tax year for which the assessment is challenged, and a unit owner's authorization for one year did not give the board of managers authorization to act as his or her agent for a different year." Leave for appeal was granted by the state's highest court, the Court of Appeals.

### Analysis

The Court's review began with the specific wording of § 339-y(4). They reasoned that, through that statute, the legislature created what amounts to a condition precedent to a board of managers acting on behalf of an individual unit owner in a challenge to a real property tax assessment levied upon a condominium. Namely, the legislature provided that the unit owner must, in writing, authorize the board of managers to dispute that tax assessment on the owner's behalf.

While they agreed with the court below that unit owners are required to give an authorization for each tax year for which an assessment is challenged, they did not agree that a unit owner's authorization for one year cannot give the board of managers authorization to act as the owner's agents for a different year. **The Court concluded that where an owner subscribes to a "standing" agency authorization conferring authority on a board of managers to act on behalf of that owner, § 339-y(4) allows that authorization to remain effective until it is cancelled or retracted.**

### The Dissent

The dissent, authored by Chief Judge DiFiore and joined by Judge Feinman, calls on the State Legislature to clarify the law "to ensure that localities paying tax refunds and condominium unit owners seeking them are equally protected and fairly treated." Only time will tell if the Legislature heeds the dissent's call to action.

The dissent also includes an important caveat to unwary unit owners, cautioning that, under the rule adopted by the majority, a unit owner who signed a blanket authorization years earlier may be surprised by a bill for the costs of litigation, which the owner may not have been entirely aware.

### Conclusion

While a condominium board of managers, acting as agent for individual owners, must have obtained written authorization from such owners to challenge a municipality's real property tax assessment under Real Property Law § 339-y(4), **a standing authorization given in one year can remain effective for future years until it is cancelled or retracted.** Since the board may also charge unit owner for which it is acting as agent a pro rata share of expenses, disbursements and legal fees, unit owners should be mindful that such authorization also carries a financial risk.

*Corey A. Auerbach, Esq. is a partner in the law firm of Barclay Damon LLP. He provides general counsel legal services to community associations throughout Western New York.*

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