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From the Law Offices of
PERKINS & ANCTIL P.C.
ATTORNEYS AT LAW

LAW QUARTERLY

I N THIS ISSUE

Water, Water, Everywhere…

By: Charlie A. Perkins, Esq.

Almost every multi-level condominium we represent has encountered issues with water infiltration over the years. These situations usually arise when a lower level unit suffers water infiltration damage from a known or unknown source. The most consistent problem arises when the source of the water causing the damage is clearly from another unit and not a common element. In this type of situation, the board must determine if it is *obligated* to act under these circumstances or if they will be held liable for their failure to act or remedy the situation.

In the case of Brauer v. Burnes, the Superior Court ruled that although the Board may *voluntarily* act to address this type of matter, it is ultimately the unit owner's responsibilty to address the issue causing the leak and remedy the problem.

This case involved a unit owner who filed numerous complaints about water damage which ultimately were the result of another unit owner's failure to maintain and/or prevent water infiltration to a lower level unit. Like many documents, the Association had a provision that allowed the board to act using its own judgment, but the documents did not mandate that the board take specific action to remedy the situation. Ultimately, the unit owner initiated a lawsuit against the board claiming negligence, breach of contract, trepass and nuisance. The Court found in favor of the Association on every count and dismissed the complaint on summary judgment. The Court specifically found that the provision in the Declaration of Trust pertaining to the board's ability to perform work on the unit was permissive rather than mandatory and relied on the same as one of the principles for dismissing the case.

Although this was a lower court decision, this case was certainly helpful in resolving many of the conflicts which an association may face with respect to water damage and other issues.

55-and Better Communities

By: Scott J. Eriksen, Esq.

We used to think the most important thing to know about over-55 communities was the Housing for Older Persons Act (HOPA), the law that allowed these communities to prohibit occupants under 55 (which obviously includes children) without risk of discrimination claims.

While the speakers at the 39th Annual Community Association Law Seminar covered HOPA, they also covered other laws that come into play when boards are confronted with problems as the over 55 occupants age in their units. Consider, for example, whether associations have any legal obligation to address conduct and behavior of occupants?

This is a question that often confronts us, but the importance of the question is emphasized when the behavior and conduct threaten the health and safety of others. Conduct of an aging occupant who forgets something is cooking on the stove or who cannot maintain his or her unit in a sanitary manner can present far graver consequences to the community than the type of conduct frequently complained of in non-age restricted communities.

The latter (such as music, loud parties, etc.) tend to be more annoying than dangerous. In one case in Tennessee, where an owner-occupant failed to correct unsanitary conditions including rotten food, bodily fluids, and mold, the association was left with no choice but to resort to litigation and finally received judicial authority to sell the unit (and was awarded its legal fees).

Also, in 55+ communities, the need for curb cuts, ramps, and handicap parking spaces, among other modifications, is on the rise, as is the need to allow occupants under 55 to reside with a disabled occupant in order to provide assistance, all of which are presented as requests to boards for reasonable accommodations or modifications. Continuing with this line of discussion, while acknowledging an association's obligation to comply with FHA and applicable state laws, does the association have the right or obligation to insist that the aging occupant who forgets that food is cooking engage a live-in aide? Does the association have the right or obligation to spend association funds to clean out a hoarder's unit and sanitize it to prevent a spread of rodents or insects to other units, or to prevent fires? Does an association increase its liability by failing to take these actions or by undertaking them? Does the association even belong in these areas of occupant conduct?

While there are few definitive answers to many of these questions, it is quite clear that over - 55 communities present numerous challenges that are not addressed in, and probably were not contemplated by, the Housing for Older Persons Act. As these populations age and the occupants become more fragile, it is clear that community association law, when applied to over-55 communities, requires increasing familiarity with laws other than those that simply permitted the creation of these communities.

Hoarding – It's Worse Than You Think

(Excerpt from Condo Media article with Ellen Shapiro, Esq.)

By: Scott J. Eriksen, Esq

Did you know that in 2014, hoarding was recognized as a psychiatric disorder that an estimated two to five percent of the population suffers from? That's nearly 12 million people. Having dealt with multiple incidents of hoarding at the communities we represent, we were surprised to learn of the incredible prevalence of this issue. Hoarding can present a bevy of problems for boards, managers, and neighbors. Oftentimes, hoarding begets safety and sanitary woes; fire hazards, vermin, noxious odors, and other unpleasant or unlawful conditions. These issues, the products of the underlying disorder, must be addressed, but again, the lesson from this year's seminar was one of perspective.

Associations are not in a position to treat psychiatric disorders, and hoarders will likely continue to hoard, even if a board cracks down on the problems that the behavior has created for the community. It is important to take this into consideration in terms of formulating a comprehensive

strategy for resolution, and to spend time defining what a success should look like in different terms.

Court orders are most certainly necessary, at times, to correct imminent threats of damage or injury, but event these are unlikely to curb the conduct of the offender (remember, a court order is not likely to "cure" one of a psychiatric condition). Associations would do well in incorporate families or municipal or charitable service and support agencies when available to supplement their approach to hoarding cases. Boards may also want to consider adopting or enhancing clear access and clean-up provisions to leverage the power of their governing documents in order to monitor and prevent worsening conditions.

Congratulations to Omni

Properties and The Groton Inn

OMNI PROPERTIES,LLC

By: Robert W. Anctil, Esq.

Perkins & Anctil would like to take this opportunity to congratulate Omni Properties on the reopening of the Groton Inn and to thank Omni for the trust they placed in us to guide them through this process.

The Groton Inn was once America's longest continuously running inn, the original structure (circa 1678) was destroyed by fire in 2011.

The Inn reopened on May 3, 2018 as a reimagined building sharing a number of the design features of the original.

The Inn was made possible through the vision, hard work and dedication of John Amaral of Omni and his entire team.

Attorney Rob Anctil participated in all aspects of the development from acquisition, permitting, raising equity, securing debt financing and reviewing all contracts. The Groton Inn is a truly spectacular property which we all hope will continue to serve the community for another 300 plus years.

Join us at The New England Condo Expo on May 22, 2018!

Tuesday, May 22, 2018 from 10:00 AM to 3:30 PM

Seaport World Trade Center
Exhibit Hall
200 Seaport Blvd, Boston, MA

Visit us at Booth # 326

A must-attend for all board members, property managers, condo & HOA decision makers and apartment building owners. Learn about the latest services from more than 175 exhibitors. Attend educational seminars, network with your peers and get free advice from industry experts.

2018 Boston Marathon

By: Daniel M. López, Esq

My wife Caroline swam…. I mean ran the 2018 Boston Marathon. I am not typically one to brag, but after watching her train and run the race, she reaffirmed just how truly amazing she is. Not only did she run a marathon which is a huge accomplishment by itself, but she helped raise over $7,500.00 for cancer research by Dana Farber.

For those of you who may not have been watching or paying attention to the Boston Marathon, this year you could not have asked for worse conditions. The temperature was in the 40s, there was torrential rain along the entire course, and there were 25 to 35 mile per hour headwinds the entire race. As a spectator, it was hard just to be outside and watch because the conditions were so bad. Several elite runners dropped out before the race began. Several thousand more were unable to finish the race due to hypothermia and injury, but my wife and thousands of other runners pushed on through the abysmal weather.

After Caroline finished the race, I teased her that she actually swam the Boston Marathon. This half-joke, given the rain, was based on the fact that Caroline and I met on the varsity swim team at Boston College. That little joke turned out to be a little too accurate. A few days after the race Caroline began to complain of ear pain and went to the doctor. She was diagnosed with an an outer ear infection more commonly known as

swimmer's ear. She really did swim the Boston Marathon.

In reality, this years Boston Marathon was more about survival and finishing that setting a personal record because of the conditions. The eventual women's champion Desi Linden, the first American woman to win the race in 33 years, finished in a time of 2:39:54. That was the slowest time for a women's champion since 1978. Everyone who participated was a fierce competitor and finishing was an amazing accomplishment for Caroline and all the other runners. However, Caroline could not have done it without the support of so many amazing people. Therefore, we want to extend a big thank you to all our family, friends, coworkers and colleagues who suppported Caroline thoughout this endeavor.

PERKINS & ANCTIL is GOING GREEN!

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Thank you!

Changing Marijuana Laws in MA Could Result in New Condominium Rules

By: Sanford Johnson

The Commonwealth is set to allow recreational pot smoking in July 2018. Given its pungent nature, the activity is likely to set neighbor against neighbor in some densely built associations – even more so than cigarette smoking did when its social acceptability was downgraded over the last decades. Some community associations are preparing themselves by drafting amendments to their governing documents that prohibit or control pot smoking, as described in a recent Boston Globe article on the subject. If readers have questions about how their association can deal with the issue, please contact Scott. J. Eriksen of our firm. Scott@perkinslawpc.com or call 978-496-2000.

ABOUT OUR LAW FIRM

Perkins & Anctil, P.C. is a leading firm in all facets of real estate law. Our diverse and robust experiences includes all aspects of condominium and community association law, real estate conveyancing (including the representation of numerous local and national lenders), developer representation (from municipal approval process through the sale of property), landlord-tenant matters and real estate litigation. In addition we offer years of industry knowledge in general litigation and bankruptcy cases, as well as a full spectrum of employment related matters. Our attorneys have been acknowledge for their expertise in Massachusetts, New Hampshire and throughout the country. We encourage you to set up an initial complimentary meeting with us. www.perkinslawpc.com

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