



Sweet, Maier & Coletti, S.C.

114 N. Church St.
PO Box 318
Elkhorn, WI 53121
262-723-5480 www.wisclaw.com

Summer/Fall
2010

Inside:

- Taking Care of Your Maintenance Costs by Giving Your Roads Away 1
- New Wisconsin Law: Carbon Monoxide Detectors Required in Residential Buildings 2
- The Foreclosure Dilemma 3
- Headlines 3

Taking Care of Your Maintenance Costs by Giving Your Roads Away!?

“Maintenance and reconstruction costs associated with the ownership, use and operation of private streets, storm water collection facilities, sanitary sewer and water well and delivery systems serving our communities are big ticket items” began Attorney John Maier, in his July 19, 2010 address to the Wisconsin Condominium Association meeting in Milwaukee. “So big, in fact, that these costs can grow beyond the capability of the community to financially support,” he continued.

In response to the collective question what to do about it, Attorney Maier suggested that some homeowner associations are considering asking the local government to “take it over”. He then went on to conduct a “workshop” with those in attendance, designed to review the “pros and cons” of public vs. private ownership of streets and other infrastructure, how to present a proposal for public dedication to give it the

financial and operational “fallout” associations can expect following a turnover of authority.

“While private roads and parks may have seemed to be a good idea at one time,” Maier reflected, “the responsibility for ongoing maintenance has now turned the dream into a nightmare for some Associations who just can not continue to maintain these amenities in a cost-effective manner.”

Community Associations with private roads may have security guards and gates to keep nonresidents out, abundant parking, and traffic features designed to protect the safety and harmony of the neighborhood, such as speed bumps. But such benefits carry hefty price tags for annual maintenance and snow removal, and the periodic contracts for repaving are often found to cost an amount of money many classify as prohibitive.

Attorney Maier’s presentation included a checklist of “things to consider” when pondering

the question of a turnover to municipal ownership, as well as a list of procedural steps that have to be undertaken before the question can even be put to a vote by either the Association or the municipal board or council.

Maier concluded his remarks by cautioning those in the audience to: “Do your homework, and make your own checklist. Community Associations need to size up the obstacles before spending too much money, time and effort. You need to identify the problems and potential problems ‘up front’ so that these can be presented to your homeowners.”

A copy of Attorney Maier’s presentation outline is free for the asking – we will gladly send it out free of charge.

Email your request to:
jmaier@wisclaw.com

Great Truths Adults Have Learned:

Laughing is good exercise. It’s like jogging on the inside.

To request an email copy of future newsletters, submit an email address to: tmaier@wisclaw.com

Condo Focus



New Wisconsin Law: Carbon Monoxide Detectors Required in Residential Buildings

As many of our readers are aware, the State of Wisconsin has adopted regulations which mandate the installation of carbon monoxide detectors in most residential buildings. See Wis. Stat. § 101.149. The regulations are now in effect state-wide.

The first question which must be addressed by most communities is **“Who is responsible for compliance with these regulations?”** The regulations fix the obligations upon the “owner” of the building. In some instances, such as most single-family subdivisions, the answer is obvious. In other communities, especially condominiums, the answer may not be clear.

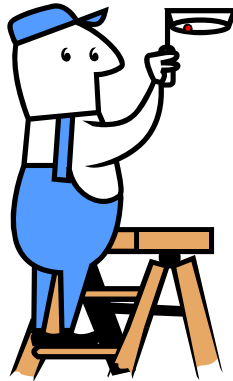
A further complication is the requirement that most of the detectors must be installed within a dwelling unit. Thus, the association is charged with compliance with the new regulations, but has limited ability to enter the premises where the detectors must be installed.

Only one carbon monoxide detector need be installed in a single-family dwelling. Wis. Stat. 101.149(2)(b). In communities consisting of single-family dwellings, such as a subdivision, compliance with the requirements of these regulations is manageable.

In communities consisting of multi-family buildings (three units or more), the requirements of the regulations are generally much more demanding. Although buildings with three or more dwelling units, which do not have attached garages, are exempted from the requirements in some circumstances, see Wis. Stat. §

101.149(5), carbon monoxide detectors must be installed in the following places within a multi-family building:

1. In the basement of the building, if it has a fuel-burning appliance.
2. Within 15 feet of each bedroom that has a fuel-burning appliance or a unit that is immediately adjacent to another unit with a fuel-burning appliance.
3. In each room that has a fuel-burning appliance and is not used as a sleeping area, a carbon monoxide detector must be installed not more than 75 feet from the fuel-burning appliance.
4. In each hallway leading from a unit that has a fuel-burning appliance, a carbon monoxide detector must be installed in a location that is within 75 feet from the unit, except where an electrical outlet is not available within 75 feet of the unit, a carbon monoxide detector must be installed at the closest available electrical outlet in the hallway. *Wis. Stat. § 101.149(2).*



Whether a duplex must have more than one carbon monoxide detector is an open question. The regulations are so vague and contradictory that the Department of Commerce which is charged with administering these regulations is unsure how to answer this question.

Currently it is impossible to state with certainty if the units in a duplex need to be equipped with more than one carbon monoxide

detector. An association with duplex buildings should consider the installation of a number of detectors in a condo unit with multi-family building standards. In all circumstances, carbon monoxide detectors which are installed must be “reasonably maintained.” Wis. Stat. § 101.149(3)(a). What is required to comply with this regulation is also unknown at this time. We can assume that regular inspection of all detectors and the replacement of broken or poorly functioning detectors is required at a minimum.

How can an association deal with this additional regulatory obligation? Review of the regulations and the community’s governing documents is the first order of business. It may be possible to determine whether the unit owners, the association, or both is responsible for compliance with these regulations.

If the obligations of the association are unclear, installation of the requisite number of detectors by the association is the safe option. A community’s organizational documents may provide the association with authority to enforce the regulations and/or fine owners who fail to comply. Failing clear authority for the association to act (assuming the regulations mandate that the association act), the association should consider adopting a rule, or making changes to the declaration and/or by-laws.

In any event, associations and their members need to be cognizant of the new regulations and should take steps to insure compliance. It is believed that the Department of Commerce will begin actively monitoring compliance with these regulations in the near future. Call Attorney Coletti at our office for assistance.

The Foreclosure Dilemma

With the number of foreclosures rising steadily, lending institutions have become creative (or perhaps better stated, aggressive) in their efforts to minimize their losses. An increasing number of lending institutions have adopted the practice of commencing foreclosure proceedings, but not obtaining title to the foreclosed property until a buyer has been located. Thereby, these lending institutions seek (and are able) to avoid most, if not all, maintenance and upkeep obligations for the unit which is the subject of the foreclosure action and defer or avoid the payment of association assessments.

Obviously, this may pose a variety of problems for the association governing the property where the foreclosed unit is located. It would be unusual indeed for an owner facing imminent foreclosure to continue paying assessments. It would also be unusual for an owner facing foreclosure to continue to maintain his/her unit with the same vigor and devotion as that of an owner in good financial standing.

This tactic by lending institutions can drain association coffers and lead to denigration of the community grounds.

Regrettably, simple, cost-effective solutions to this problem are often few. The association can ask the court overseeing the foreclosure to dismiss the foreclosure for failure to prosecute. In some circumstances, this may spur the lending institution to finish the foreclosure action. The association may also commence a foreclosure action of its own (or join in the pending foreclosure). This too may spur the lending institution to act. Worst case, the association can press ahead with the foreclosure and ultimately restore the unit to the assessment rolls. Communication with the lending institution (or its attorney) may also lead to a resolution of the problem.

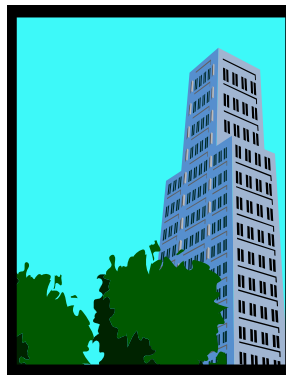
Consultation with the association's counsel is often the best place to start. Please contact our office for assistance at your convenience.

Sweet, Maier & Coletti: 262-723-5480

A new feature of our website is the "Ask Your Attorney" column where questions sent in by visitors are answered and posted on our site by one of our attorneys.

Check out our new site today and send in a question of your own to "Ask Your Attorney" at:

www.wisclaw.com



Sweet, Maier & Coletti, S. C. is dedicated to the practice of Wisconsin condominium and homeowner association law. We can help you with...

- Amendments
- Association Governance
- Formation/Conversion
- Document Interpretation
- Takeover from Developer
- Contracts
- Defense Claims
- Foreclosures



Headlines:

Fall— The Wisconsin State Bar will come out with its new edition to the Methods of Practice Book in which Lowell Sweet & John Maier have written the chapter on Condominium law.

Oct. 7— Come and visit us at our booth at the CAI Madison Conference and Tradeshow at Monona Terrace Community & Convention Center from 3 pm –7 pm

Sweet, Maier & Coletti, S.C.
PO Box 318
Elkhorn, WI 53121

Please email or call us to receive further information on the topics below.

Email or Call: John L. Maier, Jr.

Sweet, Maier & Coletti, S.C.

jmaier@wisclaw.com

262-723-5480

Anthony A. Coletti

Sweet, Maier & Coletti, S.C

acoletti@wisclaw.com

262-723-5480

Please send me information on the following topics:

Taking Care of Maintenance Costs by Giving Your Roads Away

Understanding Board Roles & Responsibilities

New Law on Carbon Dioxide Detectors

Foreclosures

Financing Unit Sales or Refinancing

(FHA, Fannie Mae & Freddie Mac)

Insurance & Risk Assessment

Budgets, Reserves & Investments

Organizational docs & governance

(Declaration/By-Laws/Amendments)

Hiring and Working with an Attorney