

The Independent Voice of NJ CIC Owners

by the **CIHC**, Common Interest Homeowners Coalition

Spring 2019

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HOW to CONTACT the CIHC: Call Ellen Vastola (*Current President*) at 732-873-3446, 9 am til 9pm.

Editor: Ellen Vastola

CIHC Website:
www.c-ihc.org

*** Important Updates ***

- **REMEMBER the Spring 2019 Cooperator Condo Expo! May 15th at the Exposition Center in Secaucus, NJ.**
 - <https://nj-expo.com/Register.aspx>
 - The CIHC will help staff the *question booth* from 10-11am. Come see me and ask questions!
- **The CIHC is finalizing its summer/fall schedule for attending "Street Fairs". We will keep you posted!**
 - Please contact the CIHC IF you want us to come to your town or Association.

Spring 2019: Message from the CIHC President, Ellen Vastola:

It is all too clear to me that our CIC Board members **NEED** Training! Every Board member needs training to be on the same page. Unfortunately, from the many calls I get, the problem seems to start with the behavior of the Board. I hear that some Board's actions are ignorant/uninformed at the least, and "abusive/ illegal" at the worst. It takes a *special owner* elected to the Board to understand their **Fiduciary DUTY** to the Community.

WE NEED "STATE" REQUIRED & Authorized BOARD MEMBER TRAINING!

****The CIHC is available to contribute to, or to conduct, Board member training upon approval from the State. ****

Let's join together as a powerful VOICE for DEMOCRACY in our CICs to make a difference!

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Quotes Corner!

It's all to do with the training: you can do a lot if you're properly trained.

Queen Elizabeth II

"Leadership and learning are indispensable to each other."

John F. Kennedy

"There is no greater education than one that is self-driven."

Neil deGrasse Tyson

The "**Independent Voice of NJ CIC Owners**" welcomes original articles & ideas for its content. Please send your submissions to the Editor and put "**CIHC newsletter idea**" in the subject line.

This newsletter is for YOU.

CIHC "HOA HUMOR"



CIC Board member: *Why do I need training? I am an adult and a professional. I have MY opinions of how my Association should be run! OH, maybe I don't know all that I should.*

Hmmm, where do I go to get training?

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What is going on in New Jersey for **CIC/CIRA** owners **Spring 2019**:

Legislative UPDATE/ Bills to track!

HOUSING - CONDOMINIUMS, COOPERATIVES AND MOBILE HOMES

[A253](#) Prohibits conflict of interests by governing board members or management employees of homeowners' associations.

[A988](#) Requires condominium and homeowners' associations to provide information to federal home loan insurance providers at no cost to potential buyers.

[A1472](#) Revises time period at which unit owners assume control of homeowners' associations.

[A2099](#) Permits master deed of condominium to reflect proportional common and limited common elements interests of each owner as fractions.

[A2114](#) Concerns membership and management of homeowners associations.

[A2159](#) Prohibits enforcement, for a period of 12 months, of homeowners' association bylaws prohibiting domesticated animals if owner is FEMA designated displaced individual following emergency declaration by President or Governor.

[A2439](#) Prohibits condominium associations from assessing insurance deductibles to individual unit owners or groups of unit owners.

[A2500](#) Requires certain common interest community associations to publish certain information; requires that homeowners' association contracts for management and maintenance include 24-hour emergency services.

[A3387](#) Requires personnel at gated communities and multi-unit complexes to allow service of process.

[A4984](#) Requires owners of multiple dwellings with at least nine units to provide maintenance services 24 hours a day.

[S1781](#) Places limit on liens filed by condominium associations for unpaid assessments on timeshares.

[S2074](#) The "Owners' Rights and Obligations in Shared Ownership Communities Act."

[S2816](#) Concerns membership and management of homeowners' associations.

PLEASE CONTACT your NJ Legislators about the BILLS we have listed.

REMEMBER to tell your NJ Legislator that ALL Laws that govern our Communities need

appropriate and strong ENFORCEMENT. Without enforcement, people will do what they want to do . . . and that can mean ignoring the Law! See the CIHC position on these Bills in previous newsletters.

<https://www.njleg.state.nj.us/members/legsearch.asp> link to find YOUR NJ Legislator.

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*****CIHC will be at the 2019 Cooperator Condo Expo!*****

May 15th at the Meadowlands Expo Ctr. <https://nj-expo.com/>

******* UPDATE: 2017 Radburn Law! *******

I wrote the following to the Lt. Gov & Commissioner of the DCA Sheila Oliver in January 2019 . . .

"The Radburn Law was passed unanimously in July 2017 and became effective in October 2017. NJ Common Interest Community owners were finally heard and eagerly awaited the formal NJ DCA regulations for enforcement. . . . still waiting January 2019 . . .

It is troubling that in the interim, I continue to receive phone calls from owners about "problems" with their CIC's elections. I have to keep telling them that the NJ DCA regulations are in the works. It is now January 2019 and owners need the regulations now.

Case Study, January 2019: *I was invited to observe/witness a CIC Open Election of their long overdue election. From my perspective, **it was a travesty of the democratic election process**. The "secret ballots" had the owners name and address; the attorney retained by the current Board had possession of and helped to count the ballots; some owners who attended the meeting were **DENIED** their right to vote **THAT NIGHT** for various reasons: one was delinquent by \$29.00 but had paid it the morning of the election **AND** as she was a candidate she was taken off the ballot anyway; another candidate was removed from the ballot **THAT NIGHT** by the Board Attorney because he owned an LLC (note: 2 Board members own **THEIR** apartment as an LLC) so then the Board said his check bounced – it had not; **AND** lastly, as an invited guest by an owner, along with an attorney retained by some owners, we were both removed from the election meeting room by Police. Note: the meeting was in the Public Library.*

Owners in NJs CICs **NEED** the *Radburn Law* to take effect immediately! We need the written regulations **NOW**. Twelve to Eighteen months is long enough. Election abuses continue to happen!"

The above did get me a reply that the DCA BHP were working on the Regs and soon would be available for public comment. **YES** - public comment. That is how our government works. **WE**, the people, get to participate in the law making via our elected Representatives, and again in the regulation writing process. We can comment.

SO – contact YOUR NJ Senators and Assemblypersons. Let them know your issues and how they can be solved. **DON'T FORGET ABOUT ENFORCEMENT!** IF the Regs do not contain appropriate and **IMPACTFUL** "consequences" to the people who **BREAK THE LAW** (the Board, the Attorney, Property Mgr) then the law will *be ignored*. As we have seen with the NJ Condo Act, etc.

Let's join together as a powerful VOICE for DEMOCRACY in our CICs to make a difference!

**The CIHC would like to acknowledge our DONORS
in 2018-19. Thank you for your support!**

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Maverick is still on watch!

“Baaaaa! I am watching and am here for you!”

CIHC supports [CIC Board member Training](#) required & authorized by the **State of NJ!**

NOTE: The **CIHC** will write a series of articles to address the “training” of CIC Board members of which this is the second. The first article addressed the *Open Public Meetings Act/ monthly CIC meetings*, Winter 2019. Watch this space for more to come in the future . . .

To continue with “**Board Member training**” . . . the **FIDUCIARY DUTY** of each Board member!

As always, we begin at the beginning with the definition of **FIDUCIARY Duty**. From *Merriam*

Webster: “**Definition of fiduciary:** of, relating to, or

involving a confidence or trust: such as

a : held or founded in trust or confidence,

a *fiduciary* relationship, a bank's *fiduciary* obligations

b : holding in trust

c : depending on public confidence for value or currency



Fiduciary relationships often concern money, but the word *fiduciary* does not, in and of itself, suggest financial matters. Rather, *fiduciary* applies to any situation in which one person justifiably places confidence and trust in someone else and seeks that person's help or advice in some matter. The attorney-client relationship is a fiduciary one, for example, because the client trusts the attorney to act in the best interest of the client at all times. *Fiduciary* can also be used as a noun for the person who acts in a fiduciary capacity, and *fiduciarily* or *fiducially* can be called upon if you are in need of an adverb. The words are all faithful to their origin: Latin *fidere*, which means “to trust.”

Editor: Ahhhhh, now that makes sense. **It is about one or more person(s) acting in the BEST interest(s) of another person(s) or entity. This relationship is based on TRUST!** The trust that the empowered person(s) will do their best for another(s). This might even

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mean that the Fiduciary will **EDUCATE** themselves, **or get training**, in areas where they are not very knowledgeable. **Hmmm, like our CIC Boards?!** From my experience, **NOT** everyone understands this concept, or is able to think or act in this capacity. A Board member needs to remove their PERSONAL wants, opinions or outcomes in order to perform for another person or group. This is hard for some people to do.

Here is an article I found, doing an Internet search, from a **NJ CIC Attorney**:

What is a Board Member's "Fiduciary Duty?" by Hubert C. Cutolo, Esq.

All too often, individuals hastily volunteer to become members of the board in their Community Associations. A board member must understand and appreciate that as a board member they are often responsible for substantial assets. Although they should be commended for their effort, enthusiasm and willingness to volunteer, these individuals must be cognizant of the legal responsibilities and obligations that come with the position. All board members must comply with their fiduciary obligations to the whole Association and its individual members.

Definition

A simple definition of a fiduciary relationship is found in "The Restatement of Law, Second, Trusts," which states "a person in a fiduciary relation to another is under a duty to act for the benefit of another as to matters within the scope of the relation". **A fiduciary owes duties of good faith, trust, confidence and candor to both the Association and its members.** Although it is impossible to identify and enumerate every act which could conceivably constitute a breach of fiduciary duty, a general rule to avoid such a breach is for board members to always act in the best interests of the Association and its members. Stated differently, board members may not act in a way that is detrimental to the Association to benefit a third party, including themselves!

The New Jersey Condominium Act

The overriding scheme of the *New Jersey Condominium Act of 1969* requires the board member of an Association to act as a fiduciary and make decisions for the protection of the whole condominium and each of the constituent owners. **The board must not act discriminatorily, arbitrarily or in bad faith.** Importantly, to comply with its fiduciary obligations, a board must only take actions that are authorized by the certificate of incorporation, master deed and by-laws of the Association. **If the action by the board is authorized then the action must not be fraudulent, self-dealing or unconscionable.** Self-dealing must be avoided and corporate opportunity enhanced. Moreover, facts which have a bearing on corporate concerns must be honestly and fully disclosed. **If any issue arises which may present an issue of conflict or self-dealing for a board member, the board member must fully disclose all facts to the other board members and should not participate in any board discussion or vote on such issue.**

NOTE: the Editor does **NOT** agree with the aforementioned "action" of a Board Member **MERELY** "disclosing a conflict of interest or self-dealing to the remainder of the Board". **The mere act of recusal regarding an issue is NOT enough!** It is my belief, that the **RELATIONSHIP** that the "conflicted" Board member has WITH the other Board members is the **REAL ISSUE!** Being "friends" can lead to decisions that could be detrimental to, or not benefit, the CIC and therefore violate one's Fiduciary Duty.

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Protection of Common Elements and Assets

In addition to ensuring that its actions are authorized and not fraudulent, self-dealing or unconscionable, the board has an obligation to preserve and protect the common elements and Association assets for the benefit of all its members. Although there is no all-inclusive list which will advise the board of those actions which must be undertaken to fulfill its fiduciary obligations, a board must ensure that its acts are authorized and undertaken in the best interests of the Association.

Business Judgment Rule

Board members must keep in mind that they may be liable for any acts or omissions which breach their fiduciary obligations. **As long as board members act in good faith and in a manner which he or she reasonably believes to be in the best interests of the Association, the Association would have an obligation to indemnify the board member in the event a lawsuit arises.** It should be noted that an overall defense to claims of breach of fiduciary duty is the business judgment rule. All that is required is that board members act reasonably and in good faith in carrying out their duties. **The courts will not second-guess the actions of a board member unless it appears that they are the result of fraud, dishonesty, or incompetence.** If any questions or issues arise concerning fiduciary responsibilities, board members may wish to consult the legal professional retained by the Association.

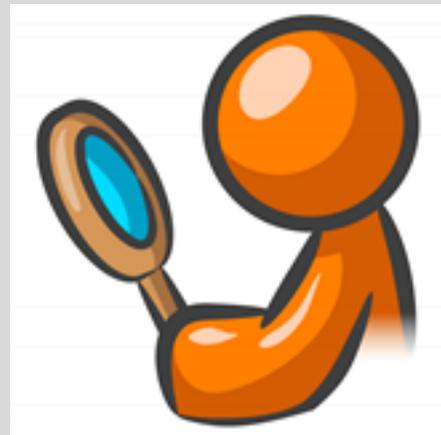
**** Underlined or Highlighted text for emphasis by the EDITOR.

The above information is provided to help you be a better Board member OR to educate yourself about Board members standard of performance. Remember, that the contracted "employees" also have a fiduciary duty to act in the BEST interests of the Community, and NOT just to please the Board. **Look at their contracts!**

CAUTION: some of our CIC professionals **KNOW** the Law and/or the "rules", BUT, do they **perform** in accordance with them? "Ahhh that is the rub". **"Trust & then inspect!"**



&



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UPDATE from the “traveling” President of the CIHC! : this ADR did **not work!**



I just returned from an **UN-successful ADR hearing**. I was *hoping* for a meeting between the unit owner and the Board which would be guided by an “impartial” mediator.

From what I witnessed, “the fix was in” and the Board, with the help of the mediator, would only entertain what they wanted all along and was NOT willing to try to find a solution via a “compromise”. It was very disappointing. The Board rep demonstrated “*my way or the highway*” mentality. And the mediator went along. Actually, I felt my biggest contribution was by asking probing questions. I also mentioned that we were there to find a **COMPROMISE!**

I had high hopes that the mediator would perform as I had observed previously. Yes, I had experienced the performance of this mediator before, **and had been impressed**. BUT what happened on THIS occasion was **NOT impartial**. Therefore, my assessment of this mediator has changed - for the worse. What I observed . . .

- We, the Board and the unit owners, were NOT in separate rooms which avoids direct contact/confrontation between them. (*note: I have been to other ADRs [mine & others] where separate rooms were used.*)
- The Board member was NOT prepared with all the documentation to support their “side”. Hence there were repeated interruptions by the mediator and the Board member leaving the room to get documents . . . and who knows what else?
- From what I saw and heard, the Board member had a “**closed mind**” and was not open to finding a compromise.
- This Board member did NOT have knowledge that other owners had already made this property modification, *without permission*, that this owner was **asking permission** to do – and was denied. Hence this ADR.
- We learned from the Board member that the Board had previously taken a vote in a “work session” that impacted THIS situation. (*Hmmm, violation of Open Public Mtgs Act and the Condo Act: no binding votes are to be taken at a meeting closed to owners.*)
- I was surprised that the mediator encouraged the complainant owner to accept the ADR (what the Board wanted all along: no compromise) because going to court would NOT help them. (*really? I do not feel that the mediator should say that. Out of order.*) You are PAID to be impartial and GUIDE the 2 opposing parties to find common ground. This did NOT happen on this occasion.
- I had previously seen this mediator work to find a compromise in another ADR. So I was very disappointed in this ADR. *What changed?* (*Hmmm, a CIHC newsletter article?*)

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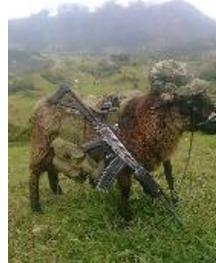
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So, after 1 hour and 20 minutes, I admit I was getting frustrated with the closed minded Board member and mediator in “lock step”. **Because of my frustration and asking challenging, forceful questions I was ejected from this meeting.** (*This is getting to be a habit – sigh*) I was getting a bit stronger in trying to be heard. The mediator did not like this and maybe, that I cited **Law** which the Board violated. Why did the mediator NOT defuse the situation and follow the Law; isn't that their job, to be cool and impartial and Law abiding? It is NOT impartial when you side with one party, which was very evident.

The unit owners came out about 20 minutes later and no progress had been made. It was still the “Board's way” or nothing! **NO COMPROMISE!** (*“shocker!”*) I was very disappointed in the whole ADR process! I feel it was a **done deal** when we walked in. NOT an ADR!

But, I do not like living “in problem mode”. I need to find solutions. I gave the process some thought and then called the unit owner and we put our heads together the next day. We came up with the following . . .

- I felt that I need to do more mental preparation and not enter the room with *any* expectations, be they positive or negative. I need to stay calm and dispassionate. (*Yikes, I am half Italian!*)
- I asked the unit owner if they felt that I hurt the ADR by being frustrated. I received an interesting answer . . . that my frustration helped him to stay calmer and focused.
- When/if I do this again, that the owner and I take more time to be clear about what each of us will do, and **not** do. I hope I have NOT hurt the CIHC's reputation or that we will be a hindrance in future ADRs. **My purpose is to support owners as an informed “supporter or witness” as per the Condo Act and not as an attorney.**
- **LASTLY**, we thought that something else needs to be done so **both** parties, especially the powerless party (typically the OWNER), can TRUST the ADR process. **Our idea:** BEFORE an ADR takes place, BOTH sides submit their documentation to the mediator INCLUDING the options of what they are willing to give up to make the ADR work. This must be provided to the mediator beforehand to demonstrate *good faith* in the “compromise/mediation” process. IF this is not done, then the ADR does not go forward.” *The CIHC welcomes YOUR thoughts on this idea!*



AND, “new” recruit, REBEL is there too!

“Baaaa, let's find a solution!”

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Sunlight is the Best Disinfectant!

Ahhhhh, transparency!



Nosferatu (a Fiduciary?) & the rising sun (transparency).

Or maybe, exposure to the **Sun** (*facts*) causes spontaneous combustion! (*Uh oh!*)



In our CICs, the **BEST** course of action for the **elected Board** is to be fully and completely “transparent” (open to sunshine) when performing Community duties. NO binding votes behind closed doors! *Democratic Principles: YES!*

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The CIHC spotlights **The NJ Cooperator Expo!**



The CIHC is happy to be able to have a booth at the **2019 NJ Cooperator Condo Expo**. How lucky are we to have this annual Expo!

We strongly suggest that **owners** in NJs CICs attend. **EDUCATE yourselves!** Come and walk the aisles. Come with questions and then talk to the vendors/professionals (property managers, attorneys, landscapers, pavers, roofers, etc) to learn more about how to run and maintain your CIC.

As an owner, you can learn more about the governance of your community via the educational seminars.

As a Board member, the educational seminars are also helpful as are all the vendor booths. The aisles of booths give you a “leg up” on your search for entities to maintain your community. Vendor search is easier. Pick up their printed matter to review later.

AND . . . you can get “free stuff”! See you there!

<https://nj-expo.com/>

DISCLAIMER: The **CIHC newsletter** is written by and for **NON-attorneys**. **We do NOT and cannot practice law or give legal advice.** We do provide information to aid NJ CIC owners when they have issues in their communities. We can and do support New Jersey’s CIC owners and Boards for a democratic experience and enhanced quality of life, for all, in said communities. **CIHC website: c-ihc.org**

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We welcome contributions from NJ residents who share in the goals/mission of the C-IHC. We need funds for: maintenance of our website, postal mailings, flyer production & distribution, expenses for contacting legislators and others, travel, periodic meetings, speakers, etc. IF you share our Mission and Goals, please contribute. **We are a registered NJ 501(c)4 - not for profit organization.**

Please print out this form & send your helpful Contribution to become a **CIHC Friend**:

Common-Interest Homeowners Coalition,
Post Office Box 1511, Hightstown, NJ 08520.

Contributing Categories: (check off the appropriate blank)

- **Premium Contributor:** \$100 or more _____
- **Sustaining Contributor :** \$30 or more _____
- **Regular Contributor:** \$20 _____
- **Interested person/friend:** \$ _____

THANK YOU!

Please **PRINT CLEARLY!** Enclosed is my check for \$ _____

Name _____

H-phone _____ W or C-phone _____

Email _____

Address _____

Town _____ Zip _____

Name of Assoc. _____

THANK YOU for your *(continued)* **SUPPORT!**

Your contact information will be held as **CONFIDENTIAL/ CIHC use ONLY.**