

COMMUNITY ASSOCIATION CONNECTION



Winter 2024



Outgoing President's Address

**So Long,
But Not Goodbye**
Corey Auerbach, Esq.

Partner, Barclay Damon LLP, and
Outgoing President, CAI WNY

As the winter season unfolds and we approach the end of another remarkable year, it is both an honor and a bittersweet moment for me to address you as the outgoing President of the CAI Western New York Chapter Board of Directors. Serving in this capacity has been a privilege, and I am filled with gratitude as I reflect on the journey we have undertaken together.

First and foremost, I want to express my deep appreciation to the dedicated members of our Board of Directors. Your commitment and unwavering support have been the driving force behind our chapter's success. Together, we faced challenges, celebrated victories, and worked collaboratively to advance the mission of CAI. I am proud of the accomplishments we achieved as a team, and I am confident that the foundation we've built will continue to thrive.

A special acknowledgment goes to our Executive Director, Angela Ramage-Wolf, whose contributions have been instrumental in the smooth functioning of our chapter. Your dedication has made a significant impact, and I am grateful for your efforts.

I would also like to extend my heartfelt thanks to our precious metal sponsors, whose generosity and support have played a pivotal role in sustaining the growth and success of our organization. Your commitment to CAI has been invaluable, and we are fortunate to have partners like you who share our vision for a vibrant and flourishing community.

(Continued on page 2)



President's Corner **A Letter to the CAI WNY Membership**

Marc H. Schneider, Esq.
Schneider Buchel LLP, President, CAI WNY

I write to you as the new President of the WNY Chapter of CAI. I am excited to be able to lead our chapter and bring it to a whole new level.

My vision for our chapter is to substantially increase membership and to continue to provide valuable and relevant educational content that all our members will benefit from. I want our chapter to be a tremendous source of information for its members. I am hopeful we will develop a strong network where you will have opportunities to connect with fellow board members, managing agents and other industry professionals. This will provide you with an opportunity to share ideas and experiences and gain knowledge that will help each of you and the communities.

Over the coming months, my focus will be on enhancing the member experience, promoting educational initiatives, and facilitating meaningful connections among our members. I believe that by working together, we can create a stronger and more resilient chapter that benefits each one of us.

As we embark on this journey together, I want to emphasize the importance of collaboration and open communication. I will be looking to all our members to provide suggestions for educational content and ideas for increasing our chapter membership. I want our chapter to be the Chapter all the other chapters look to as a model for all chapters based on the success in providing the most value to its members. I believe we can accomplish that.

(Continued on page 4)

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Outgoing President's Address
**So Long,
But Not Goodbye**
Corey Auerbach, Esq.
Outgoing President, CAI WNY

(Continued from page one)

To our esteemed manager members and homeowner leaders, I extend my sincere appreciation for your active engagement and collaboration. Your insights, contributions, and advocacy have been essential in shaping the direction of our chapter.

While my term as President has come to an end, my service on the Board of Directors will continue and I am excited about the opportunities that lie ahead for our organization. I have full confidence in the incoming President, Marc Schneider, who will bring leadership, fresh perspectives, innovative ideas, and continued success to our growing chapter.

In closing, I want to express my deepest gratitude to each member of our community. Your commitment to fostering strong, connected community associations is what makes the CAI WNY Chapter truly special. It has been an honor to serve as your President, and I look forward to continued collaboration and success in the years to come.



Calendar of Events

We are proud to present a variety of webinars to our membership as well as an increasing number of LIVE in person events. These events are held in multiple in WNY and will be advertised as available. Please consult our website for changes: www.caiwny.org

2024

February 28, 2024

(6 P.M.– Webinar)

The Rising Cost of Insurance: Experts Explain

Featuring: Bonnie Gionta (USI) and
Steve Grimaldi (John. J. Grimaldi & Associate, Inc.)

May 15, 2024

(In Person Event - Buffalo, 5 to 8 P.M.)

Ask the Legal Experts - The Legal Panel Answers Your Questions

Rizotto Ristorante

930 Maple Avenue, Buffalo 14221

June 6, 2024

(6 P.M.– Webinar)

EV Stations: What the Board Needs to Know for the Future

Featuring Todd Pegelow, VP Renua Charge -

Electric Vehicle Charging Business

October 5, 2024

(In Person Event - Buffalo, 9 AM to 1 P.M.)

Board Leadership Training (Featuring): "Effective Strategies for Dealing with Difficult Residents"

Rizotto Ristorante

930 Maple Avenue, Buffalo 14221

ALSO ... introducing - Monthly Managers Meetings

*Zoom Meetings for Managers to share ideas, contacts, strategies, and
ideas to help improve their jobs and communities.*



President's Corner
**A Letter to the CAI WNY
Membership**

Marc H. Schneider, Esq.
Schneider Buchel LLP, President, CAI WNY

(Continued from page 1)

I encourage every member to actively participate not only in suggestions for events and chapter improvements but also to attend our various events and programs that our chapter holds. Your engagement is vital to the success of our chapter. You will find that the interaction at our programs is beneficial to everyone that attends. The larger our “community” becomes the better it will be!

I am open to hearing your thoughts, suggestions, and concerns. Your feedback is invaluable, and I am committed to ensuring that our chapter remains responsive to the evolving needs of our members.

In closing, I am excited about the possibilities that lie ahead for our chapter. Together, we can build on the foundation laid by my predecessor and our recent chapter Board. In that regard, I want to take this time to thank our outgoing President Corey Auerbach. He has done a great job in leading our chapter over the past two years. The good news is that he will remain as a board member so we can continue to benefit from his valuable input.

I also want to thank outgoing board members Dan Grabowski of Fairwood Management, Pat Socker of M&T Bank and Robert Marvin of Realty Performance Group. Unfortunately, their term limits have been reached which prevented them from remaining on the Board.

I am also excited to welcome our new Board members. Lisa Mazur, Senior Property Manager at Fairwood Management, Steve Grimaldi, President of John J. Grimaldi & Associates, and Ronald Bucelli, President of the Oakbrook Condominium Board of Managers are joining the Board. We look forward to their contributions as they are extremely qualified and will undoubtedly be tremendous assets to the Chapter.

Thank you for entrusting me. I look forward to serving you as the President of the WNY Community Associations Institute Chapter as, together, we continue to make our chapter the best chapter.

Feel free to email me at mschneider@schneiderbuchel.com if you have any suggestions, are willing to volunteer to help in our growth or have any questions.

Wishing all of you a happy, healthy, and meaningful New Year filled with exciting possibilities.

Warm regards,

Marc H. Schneider

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A Total Eclipse of the Sun

Monday, April 8, 2024

Western New York – Some may call this a “once in a lifetime” opportunity. The next time an event will happen under these conditions, HERE in Western New York will be in about 375 years.

At the very least, folks in Western New York will have the rare chance to view a total eclipse on Monday, April 8, 2024. And brace yourself ... people are coming to see it with us!

According to NASA, this will be the most populated solar event – with 31.5 million people able to “walk outside their homes” and watch this spectacular, celestial rarity.

Here in Western New York, our prime viewing hours will be a range that begins at about 3:15 P.M. and last about three and half minutes. The path will scroll across the skies and blanket the land in darkness – and mostly like drop the temperatures by about 10 degrees (briefly).

Travel experts are predicting that this will also be one of the single-biggest mass travel events in the United States, according to the Great American Eclipse website. Recommended locations for optimal viewing – **here in the Western New York Community** – include Buffalo, Niagara Falls, Rochester, the Finger Lakes, and Syracuse.

Remember, it's very dangerous to stare directly at the sun. The sun's powerful UV rays could burn a hole in your eye tissues, which could lead to serious issues with your vision, or even blindness.

The only time to safely look toward the sun — with our naked eyes — is during a total solar eclipse when the moon is fully blocking out the sun's disk. But outside of that moment, you're going to need some special but simple equipment.

For direct viewing, many people use special “eclipse glasses” or a handheld solar viewer, which reduce sunlight to low enough levels that it doesn't injure eyes. These are at least one thousand times darker than ordinary sunglasses. You cannot wear regular sunglasses. Eclipse glasses can be worn on your face, whereas viewing cards are about the size of an index card and held in your hand. Both should comply with the International Organization for Standardization (ISO) 12312-2.

While using eclipse glasses or viewers, do not look at the sun with a camera lens, telescope, binoculars, or such. The concentrated solar rays will burn through the filter and result in serious eye injuries, according to NASA. Make sure to discard the viewers if they are torn, scratched or damaged.

If you don't have eclipse glasses or viewers, you can use indirect viewing methods to view the eclipse. One method is to use a pinhole projector, which projects the sun onto a nearby surface. NASA and other government agencies have instructions on how to set up various types of projectors to safely view the eclipse.

It's a BIG thing. So, buy your glasses, make some plans, get out your deck furniture, check the calendars – many schools and businesses will be closed for “viewing” – and maybe invite some friends.

Below are some websites that can offer details as well as some local information so you can join in on the fun.

Happy viewing!

Links to check out:

[NASA Total Eclipse 2024](#)

[Great American Eclipse 2024](#)

[National Eclipse Map 2024](#)

[Rochester Eclipse 2024](#)

[Buffalo Eclipse 2024](#)

[Finger Lakes Eclipse 2024](#)

Q.

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Can they REALLY Do THAT?

Ronald Shubert, Esq

Ronald is a partner in the law firm of Phillips Lytle LLP and presently represents more than 415 community associations in New York State.

QUESTION:

Our Board is considering adopting restrictions on rentals and has several questions regarding legality, limits on the number of rentals, review of leases and how restrictions will affect mortgagees when homes are sold.

ANSWER:

Generally, the Association Declaration and Bylaws can be amended to place rental restrictions on the Homes. I recommend that current Owners be grandfathered and allowed to continue renting their Homes. There are many variations of how rental restrictions can be implemented. Associations can prohibit rentals altogether or set a limit of approximately 10% of the Homes that can be rented. Exceptions can be made for extenuating circumstances, etc. The growing desire for rental restrictions has been the result of the secondary mortgage market which is uncomfortable with lending to communities where more than 10% of the Homes are not owner occupied. In addition, the insurance market has made it clear that they to are concerned about Associations where more than 10% of the Homes are occupied by tenants.

As a result, most communities are amending their legal documents to provide for rental restrictions.





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LAW AMENDED REGARDING RETAINAGE ON CONTRACTS

Understanding the Implications of the Retainage Reduction Act for Cooperative, Condominium, and HOA Communities

. Schneider, Esq.
Schneider Buchel LLP, President, CAIWN

On November 17, 2023, New York State enacted the Retainage Reduction Act (the “Act”). This legislation brings crucial changes to New York’s General Business Law affecting certain current and all future construction contracts entered into by Cooperative, Condominium, and Homeowners Association communities. The Act provides that for any construction contract equal to or greater than \$150,000, the property owner (which includes community associations) can only withhold a maximum of 5% as retainage. There are severe penalties for noncompliance. The Act only applies to contracts entered into after November 17, 2023.

THE FIVE (5%) MAXIMUM RETAINAGE RULE

The Act now restricts retainage to Five Percent (5%) of the contract sum. Retainage must also be released within 30 days after the owner provides its final approval of the work. In the event the owner does not release the retainage funds within 30 days of providing final approval, the owner (community/board) shall be subject to pay the Contractor One Percent (1%) interest per month from the date the retention was due. This is a significant financial penalty for non-compliance with this portion of the law. It also limits the ability of property owners to leverage retainage to compel contractors to complete other items such as manufacturer’s warranties and lien waivers. As such, it is important that Boards, managing agents and/or the engineer/architect hired for the projects pay careful attention to when “substantial completion” is achieved and how it is defined.

THE DEFINITION OF SUBSTANTIAL COMPLETION IS CRITICAL

The changes to the law were aimed to reduce delays in the release of retainage to contractors on private construction jobs that have been “substantially completed.” Pursuant to the new law, contractors are now authorized to invoice private property owners (which includes Co-ops, Condos, and HOAs) upon reaching “substantial completion” of projects. This means now more than ever, Boards and Managing Agents alike must be aware of each contract’s precise definition of what “substantial completion” means. This is because under the law, “substantial completion” means “as such term is defined in the contract or contemplated by the contract”. This awareness and clear delineation of “substantial completion” in your community’s construction contracts can prevent premature billing and disputes over when the final payment is due. Since the new law provides that the contract can define what “substantial completion” means, we believe if the contract properly defines “substantial completion” as 100% completion, then communities can still hold a retainage of 5% of the contract sum until all work is completed or even 30 days after that date. Furthermore, while property owners cannot withhold retainage for more than 30 days after the project is complete, nothing in the law prevents the contract from providing that the final payment (other than the 5% retainage) will not be owed until other such terms are met (such as manufacturer’s warranties, certificates of occupancy, etc.). As such, it is extremely important to engage your community’s attorney to review and/or draft all construction contracts. This will not only ensure compliance with the new law, but also make sure the association is as protected as possible on when the final payment needs to be made.

EFFECTIVE DATE

The effective date of the Act is November 17, 2023. This means that if your community signed a construction contract for more than \$150,000 after that date, and that contract calls for your community to withhold more than 5% as retainage, you should immediately modify your payment schedule to bring your retainage to no more than 5%.

In the event this scenario does not apply to your community, it is imperative that the above concerns are considered during contract drafting and negotiation when your community next plans to commence a construction project.

The Retainage Reduction Act marks a pivotal shift in how construction contracts in New York State are drafted, negotiated, and implemented. Cooperative, Condominium, and HOA communities must acclimate to these changes to ensure successful project execution and sound fiscal management going forward.

Should you or your community require guidance or have inquiries regarding the Act, feel free to contact us.

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Corey Auerbach

Partner at Barclay Damon and CAI WNY Board President

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Due Process: Ensuring Fairness in Enforcement

Corey Auerbach, Esq.
Partner, Barclay Damon LLP & CAI WNY Board Member

Community associations serve as the backbone of shared living spaces, fostering a sense of community and maintaining order through enforcement of the association's governing documents. When a resident is found to have violated these governing documents, principles of fairness and justice are fundamental to the integrity of the association. Affording due process before imposing any penalties permitted in the governing documents, whether monetary or non-monetary, is essential to uphold the values of the community.

Preserving Fairness: Due process is a fundamental right that ensures individuals are treated fairly and justly under the law. In the context of community associations, this principle is a cornerstone of effective governance. By affording residents the opportunity to be heard and present their side of the story, community associations can avoid arbitrary decisions and prevent potential conflicts.

Clear Communication: Due process requires clear communication. When a resident is accused of violating governing documents, they should be promptly informed of the alleged violation and provided with specific details regarding the charges. This transparency not only fosters trust but also allows the accused party to understand the nature of the violation and prepare a meaningful response.

Opportunity for Defense: Due process ensures individuals have the right to defend themselves against any accusations. Affording residents an opportunity to appear and be heard, present evidence, and address any misunderstandings or misinterpretations, enables fair and informed decision-making, preventing unwarranted penalties that may negatively impact a resident.

Consistency and Uniformity: Establishing a due process framework contributes to consistency in the enforcement of governing documents and association policy. A uniform approach helps avoid favoritism or discrimination and fosters a sense of trust among residents. Knowing that everyone is held to the same standard creates a fair and equitable living environment for all.

Mitigating Legal Risks: Failure to provide due process may expose community associations to legal challenges. Residents who feel their rights have been violated may seek legal recourse, leading to potential litigation and associated costs. By affording due process, community associations can protect themselves from legal pitfalls and promote an environment of compliance and cooperation.

In conclusion, the importance of due process in the enforcement of governing documents cannot be overstated. It is a safeguard against arbitrary decision-making, promotes fairness, and upholds the values of justice within the community. By providing residents with clear communication, an opportunity for defense, and ensuring consistency, community associations can effectively address violations while maintaining a harmonious living environment. Upholding due process is not only a legal obligation but a fundamental principle that contributes to the overall well-being and cohesion of the community.



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Keep the Home Fires (Safely) Burning

One of winter's great pleasures is relaxing in front of a warm, cozy fire. For most months of the year, however, the fireplace stands idle, and these long periods of disuse can lead to hazardous conditions when you light your first fire of the season.

Your fireplace needs regular care and cleaning to assure a safe and roaring fire. Creosote, a flammable, tar-like substance that accumulates in the firebox, chimney and flue, should be removed by a professional once a year, eliminating the worry of a potential fire hazard. Your chimney should also be inspected annually to ensure there are no structural problems.

Clean your fireplace and its accessories regularly to prevent the accumulation of soot, ashes and creosote tars. The following guidelines will help you keep your fireplace in good working order throughout the wood-burning season:

- Vacuum or sweep the hearth weekly to prevent dust and soot buildup. Do not sweep or vacuum until all embers have been extinguished for at least 12 hours.
- Burn only well-dried, seasoned wood to minimize dangerous creosote buildup and reduce the risk of toxic fumes and excessive smoke.
- Don't use water to drown a fire except in case of an emergency. Water will make a paste of the ashes, which is difficult to remove.
- Don't use an abrasive cleanser inside the fireplace; many such cleaners leave a flammable residue. Instead use a stiff-bristled brush to gently scrub the walls of the firebox.
- When cleaning your fireplace, sprinkle damp coffee grounds over the cooled ashes to keep down the dust.

For more tips on fireplace care and maintenance, as well as kerosene heaters, wood-burning stoves and furnaces, check out this link: [FIREPLACE SAFETY](#)

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Beware of Foreclosure Scams

Rising foreclosure rates have led to an increase in scam artists offering to aid homeowners in financial straits. They typically promise to help save the homes of people facing foreclosure, but will strip away the value of the home with no benefit for the homeowner.

The National Foundation for Credit Counseling advises homeowners to proceed with caution if an individual or company:

- Calls itself a “mortgage consultant” or “foreclosure service.”
- Contacts people whose homes are listed for foreclosure, including anyone who uses flyers or solicits for business door-to-door, by phone or email.
- Encourages you to lease your home so you can buy it back over time.
- Collects a fee before providing any services to you.
- Instructs you to cease all contact with your lender, credit or housing counselors, lawyer or other legitimate experts.
- Tells you to make your mortgage payments directly to him or his company (not the lender).
- Requires that you transfer your property deed or title to him or his company.
- Makes a promise that seems too good to be true, for example, instant cash with "no strings attached."
- Tells you that as part of the deal you will need to move out of your house for some period of time for remodeling or other reasons.
- Offers to buy your house for cash at a fixed price that is not set by the housing market at the time of sale.

What should a homeowner **never** do?

- Don't be pressured to sign a contract. Take your time to review all documents thoroughly, preferably with a lawyer who is representing your interests only.
- Don't send or give your mortgage payments to someone other than your lender, even if he promises to make the payments for you.
- Don't sign away ownership of your house to anyone without advice from a credit or housing counselor or Lawyer.
- Don't rely on verbal agreements. They mean nothing. Get all promises in writing and keep copies of all documents, especially those you sign.
- Don't sign anything containing blank lines or spaces. Scammers can add information later without your knowledge or approval.
- If you do not speak English, use your own translator. Don't depend on someone who is provided by the “rescuer.”
- Don't fall for promises often used to lure homeowners such as claims to save your credit rating, promises of instant cash, guarantees that a buyer will be found within a certain number of days, help in filing for bankruptcy to “stop the foreclosure” and offers of free rent or gifts.



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NEW LENDING REQUIREMENTS FOR CONDOMINIUM AND HOMEOWNERS' ASSOCIATIONS

Ronald Shubert, Esq

Ronald is a partner in the law firm of Phillips Lytle LLP and presently represents more than 415 community associations in New York State.

Fannie Mae and Freddie Mac have adopted new project eligibility standards for loans to Purchasers in Condominium and Homeowners' Associations.

Both Fannie Mae and Freddie Mac purchase the majority of the mortgages offered by local banks and financial institutions to purchasers of Condominium and Association Units. Accordingly, these "local mortgages" must meet both Fannie Mae and Freddie Mac standards, and the project must be approved before the loans are purchased by either Fannie Mae or Freddie Mac.

Property Managers routinely receive questionnaires from local lenders inquiring as to the number of rentals in the Association, delinquencies etc. However, certain additional questions will be asked concerning budgets, financial reports, reserve studies and building inspection reports, if available. When lenders ask Community Association Managers to complete questionnaires and the Condominium or Association does not provide the information at the lenders request, Fannie Mae or Freddie Mac will put the entire Condominium or Homeowners' Association on an ineligible list for lending, or what is called a "blacklist." In December, Fannie Mae and Freddie Mac finally agreed to provide information as to whether or not a particular Condominium, or Association is on the "blacklist," which information now can be obtained directly from Fannie Mae and Freddie Mac. Both will provide advice as to what steps need to be taken to be removed from the "blacklist." Since Fannie Mae and Freddie Mac purchase so many mortgages in the United States, not being eligible could be devastating for a Condominium or Homeowners Association.

The most important takeaway from the new requirements concerns reserves.

Fannie Mae requires at least ten (10%) percent of the budget must be set aside for reserves.

Freddie Mac requires that if less than ten (10%) percent is set aside for reserves, the Association must provide a reserve study that supports the lesser amount.

Both Fannie Mae and Freddie Mac will be requesting additional documentation regarding reserve studies and funding schedules, as well as budget, financial statements, documentation regarding special assessments, and building inspection reports.

More information will follow from both Fannie Mae and Freddie Mac but be aware that these new eligibility standards took effect in September of 2023.

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Flooding: How to Protect Your Family & Finances

In many areas, flooding is the most common and costly natural disaster—and it can happen here. Just one inch of water in your home or office can cost thousands of dollars in cleanup and replacement costs, including drywall, baseboards, floor coverings and furniture. You may think you're covered, but many homeowners' insurance policies do not cover flooding.

Here are several reasons to talk to an insurance agent now about flood insurance.

- There is usually a 30-day waiting period before coverage begins.
- Coverage is relatively inexpensive.
- Renters can buy flood insurance for personal belongings or business inventory.
- Basement coverage includes cleanup expense and repair or replacement of items such as furnaces, water heaters, washers, dryers, air conditioners, freezers and pumps.
- You do not have to repay flood insurance benefits as you do with disaster-related assistance loans.
- You can receive payments for flood-related losses even if no disaster was declared.

Learn more about flood insurance at [Floodsmart Gov.](https://www.floodsmart.gov)

There are things you can do to prepare your home and family now for flash floods:

- **Make a family emergency plan.** Emergency preparedness is everyone's responsibility. Write down your plan. Decide ahead of time where you will go if you have to leave and where family members will meet up. Identify an out-of-town emergency contact.
- **Get supplies for an emergency kit.** Start with three days' water and three days' packaged and canned food. Add a battery-powered radio and extra batteries. Store in waterproof containers with wheels or that you can lift so you can take them with you. Learn more about preparedness visit [Ready for Floods](https://www.readyforfloods.gov)
- **Stay informed about what could happen.** During storm season, listen to local media for up-to-date reports on weather watches and warnings. Keep a battery-powered portable radio—with a NOAA weather band—handy in case the power goes out. Choose one.



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