



COMMUNITY PROPERTY ADVISOR

VOLUME XXII

FALL 2008

NUMBER 4

Wilkin & Guttenplan, P.C.

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One for the Books: W&G Turns 25

Managing partner, Ed Guttenplan, long enough that his oldest clients have become friends and long enough to see some of the young staff he hired early in his career become partners in his firm.

Back on September 21, 1983, when Guttenplan and Ed Wilkin began their accounting firm, it was with a commitment to providing clients the technical competence of a large national firm with the personal attention of a small local firm. Twenty-five years later, Wilkin & Guttenplan, P.C. has evolved from its early beginnings to one of the top 20 firms in New Jersey, a Best Place to Work and a leading provider of services to the Common Interest Realty Association (CIRA) industry.

“In the beginning, it was just Ed Wilkin and me,” said Guttenplan. “Looking back, I’m pleased that we’ve grown so much and come so far. Our initial goal was two-fold—providing unparalleled service to our clients while creating an environment where people were happy to work and felt that management respected their personal and professional goals. I feel that we’ve achieved both and our clients benefit.”

“As we have grown, we have constantly added new skills and disciplines enhancing

our ability to serve our clients. At the same time, we’ve worked hard to make sure that our staff knows we care about them and that we are committed to their long-term development.”

Wilkin attributes W&G’s staying power to the firm’s people-centered philosophy that has allowed them to sustain long-term relationships with clients and friends of the firm. “We take care of our staff and in turn, they make sure that our clients receive good service,” Wilkin explained. “As a result, some of our clients have been with us from the very beginning. For many of them, we are an integral part of their organizations.”

In addition to providing services to more than 750 CIRAs, Wilkin & Guttenplan also provides a wide variety of accounting, tax and business advisory services to companies and high-net worth individuals. Industry areas of expertise include real estate, technology and closely-held/middle market businesses.

Wilkin & Guttenplan currently employs over 65 people, including 10 partners. ■



UPCOMING ISSUES:

- **The Role of the Finance Committee**
- **Taxes – The W&G Way**

Associations, Contractors and Insurance

By Debbie Pasquariello, CIC, CIRMS

(Editor's note: Periodically, we invite guest authors to contribute to the CPA on a variety of relevant, timely topics. In this article, Debbie Pasquariello explores an association's need for a worker's compensation policy. Pasquariello joined Boyarin Hourigan Blundell Insurance Agency in 1983 and specializes in community association insurance. She is currently the insurance professional for approximately 450 communities and is a Certified Insurance Counselor (CIC) and Community Insurance & Risk Management Specialist (CIRMS). Pasquariello can be reached at dpasquariello@bhbins.com.

Associations often hire independent contractors. There can be serious disputes concerning the relationship of the two parties if an employee of the contractor or the contractor himself is injured on the job. If the contractor does not carry workers' compensation insurance, the contracting party – the association – is deemed to be the employer and its workers' compensation policy can be called upon to pay the claim. If the association has no workers' compensation coverage, it can end up with an uninsured expense.

It is always wise to have a written contract with a contractor, stating that the contractor and his employees are not employees of the association. The contract should also require that the contractor carry workers' compensation insurance covering his employees. The contract should specify that the association is not responsible for injuries sustained by employees of the contractor who may not be covered under workers' compensation. In addition, in New Jersey the owner of a sole proprietorship, and the partners in a partnership or LLC, have the choice to opt in or opt out of their company's workers compensation policy, so they may or may not have coverage for their own injuries.

Independent contractors should be asked to provide Certificates of Insurance as proof that the required coverages are in force. In addition to workers' compensation, the contractor should carry general liability coverage and, if applicable, automobile liability. In addition to proving that the contractor is covered, the association will need his certificates of

insurance when its own insurance carrier conducts an audit. The audit will show payrolls and if the association cannot show certificates of insurance, its own insurance company will charge a premium counting the contractor's employees as employees of the association. If an owner or partner has opted out of coverage on the contractor's policy, the audit will include a charge for those people, since they have no coverage anywhere else. It's important to note that this audit premium is payable whether or not there were any claims!

If possible, the association should negotiate a clause in the contract making it an additional insured on the contractor's policies. This is not possible on a workers' compensation policy but is definitely possible on general liability and automobile policies. Thus, any claims other than workers compensation brought against the association can be submitted to the contractor's insurance policy, keeping them off the association's own policy.



Another item that should be addressed in the contract is a hold harmless agreement. The association's attorney can provide the exact language, but the association should be sure that the contractor will be responsible for his own actions.

This clause holds the association harmless from any claims made against the association because of acts or omissions of the contractor. Thus, the association's insurance company is less likely to be brought into a claim arising from the contractor's work, and the claim will not be included in the association's future premium calculations.

Even with all these safeguards in place – no employees, contracts with independent contractors, and certificates of insurance from the contractors – the association should still purchase a workers compensation policy, specifying payroll on an “if any” basis. There is a minimum premium charged for this policy, and if any of the safeguards fails and an injured person is deemed to be an employee of the association, this policy will step in and address the claim.

Continued on page 3



Co-op 80/20 Rules Change

By Vinay Navani, CPA, MBA, MST

Cooperative housing corporations have unique tax benefits. If a corporation qualifies as a cooperative under Internal Revenue Code section 216, tenant-shareholders are allowed a deduction on their personal tax returns for their share of mortgage interest and real estate taxes paid by the cooperative. As a result of this benefit, the criteria to qualify as a cooperative is critical.

The 2007 Mortgage Relief Act contained a provision which give cooperatives more flexibility in meeting this requirement. Prior to the enactment of this legislation, one of the required conditions for a cooperative was that 80% or more of the gross income was generated from tenant-shareholders. Otherwise known as the 80/20 rule, cooperatives which rented out commercial space, in some cases, were charging less than market rates to ensure compliance with this rule.

In response to this problem, two alternate tests to the 80/20 rule were added to the tax code.

Under the first alternative, a corporation can qualify as a cooperative if 80% or more of the total square footage of the corporation is used or available for use by tenant – shareholders for residential (or related) purposes.

Under the second alternative, a corporation will qualify as a cooperative if 90% or more of the total expenditures are paid or incurred for the acquisition, construction, management, maintenance, or care of the corporations property for the benefit of the tenant-shareholders.

The historic 80/20 rule remains intact under these new rules. The above alternatives are additional options for cooperatives. These rules are effective for calendar year cooperatives with their 2007 returns.

The above is a summary of these new rules and does not address all the details of this new law. Please check with your WG advisor to discuss the impact to your situation. ■

Associations, Contractors and Insurance *(continued from page 2)*

There come those times of the year when a community association needs what is known as "casual labor" to perform such tasks as preparing flower beds and removing winter trash. Sometimes an association calls on its residents to volunteer to perform these jobs. It is very important that the resident's status be defined – are they volunteers, performing the duties without compensation of any kind, or are they compensated by a reduction in monthly maintenance fee or some other fashion? If there is any form of compensation, the workers' compensation law will consider these residents as employees, subject to the law.

But if these residents are truly volunteers receiving no payment, any injuries they suffer would not be covered by the workers' compensation policy. A claim could be made by them against the association and it would be addressed by the general liability policy – but the two policies are not equivalent. The workers' compensation policy pays medical expenses and lost wages without regard to fault or liability, but the

general liability policy pays only for claims for which the association is found legally liable – there are no "automatic" payments. Some general liability policies contain a coverage called "medical payments," but these provide only a limited amount of medical expense reimbursement (no more than \$5,000, usually) for injured claimants in exchange for a signed release from further liability.

Associations whose residents perform volunteer work should consider purchasing an accident policy to provide some medical coverage for volunteers. The premium can be lowered if the coverage is specified as being in excess of any other collectible insurance the resident might have, such as personal health insurance.

There are many potential problems facing associations, whether they hire employees directly, use volunteers or contractors. The design of the association insurance program should be undertaken with the help of an insurance professional. ■



NEWS AT THE FIRM

Employee Anniversaries (Oct. – Dec.)

25 years	Ed Guttenplan Ed Wilkin
24 years	Annette Murray
23 years	Janine Zirrith
22 years	Margot Julis Sue Klimcsak
19 years	Carol Rosenvinge
10 years	Dan Manning Vinay Navani Donna Peskin
9 years	Jill Carvalheira
8 years	Cristina McLaren
6 years	Joe Chorba
5 years	Karen Becza-Woolley Maureen Jasper Tom Pedersen

Welcome

Welcome to our new staff members:

Nicole Krone – Rutgers University
Joseph Breiter – Monmouth University
Michelle Baruffi – Monmouth University
Melissa Forshay – Monmouth University

Appointments, Committees, Presentations, Publications...

Jules C. Frankel spoke on “Transition from Developer Control” on September 26, 2008 during a program sponsored by the Pennsylvania and Delaware Valley Chapter of CAI. He also participated in the panel discussion “Keeping your Gr\$\$n out of the Red” at CAI-NJ’s annual conference and expo on October 18, 2008.

On September 23, 2008, **Edward Guttenplan** presented at a seminar on transitioning from developer to unit owner control at a CAI-NJ program. He also spoke at a seminar on reserve studies on October 16, 2008 in Fort Lee.

Janine Zirrith was named to the Board of Directors for the Association for Accounting Administration. She is the Director of Chapter Development. ■

This publication is prepared quarterly by Wilkin & Guttenplan, P.C. For further information or for complimentary copies or subscriptions, you may contact Jules C. Frankel at:

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