

Community Connections



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What The Hail? Legal Trends in Colorado Insurance Law

By Lisa Greenberg, Esq., Senior Associate at Gravely Pearson Wollenweber Freedman, LLC

Catastrophic hail storms are an unfortunate and an increasingly common reality throughout Colorado's Front Range, causing hundreds of millions of dollars of damage every year. In 2017, a hail storm severely damaged the Colorado Mills mall in Lakewood, breaking open skylights and severely damaging the mall's roof, allowing rainwater to flood the mall's stores. It took more than six months for repairs to be completed before the mall could re-open. However, these hailstorms are indiscriminate; damaging condo and townhome communities as well. The increase in destructive storms has caused a simultaneous increase in large insurance claims. This has prompted insurance companies to push back on policyholders attempting to recover property loss benefits. That pushback has led to litigation, where homeowner associations have been forced to sue their insurance carriers. This insurance litigation has resulted in some interesting trends that multi-family communities and managers should be aware of as they work together during the insurance claims process:

Timely Reporting

Most insurance policies require HOA policyholders to report damage to the insurance company "promptly." Unfortunately, these policies do not define what "prompt" means, leaving the interpretation of this vague term up

to a court. Many of these cases end up in federal court. Our federal courts have identified two separate issues related to the question of prompt notice. Some courts have focused on the deadline for when the prompt notice timeline begins to run, finding that whether notice is "prompt" relates solely to the date the damage occurs, rather than from when the HOA knows about the damage. Other courts have focused more on the length of time between the occurrence and/or knowledge of the damage and when the notice is given to the insurance company. In those cases, courts have sometimes indicated that HOAs failed to provide prompt notice when they failed to report

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Letter From The President

By Leah Shantz, 2019 Chapter President

So far 2019 is proving to be a very interesting and exciting year! Our committees have been hard at work planning and implementing fun, informative and educational events with you in mind.

The 2nd Quarter has provided managers with the M100. We are hosting two additional courses, the M206 in September and the M201 in October. Our learning opportunities did not end with the M100; homeowner leaders enjoyed a full day of education at the Board Leadership Development Workshop in April. If you missed it, join us at the next one in October.

As always, our monthly luncheons offer a great opportunity for networking and education. Thomas Skiba, the CEO of CAI's national office, spoke at our April

Education Luncheon. In May, we learned about insurance and the H06/Master Coordination Class. The second Tuesday of each month is our monthly luncheon, so don't miss out.

The Bowling Tournament was a sellout success with all teams spoken for and so many cheerleaders. We will end the 2nd Quarter with the very popular Wild about the Cheyenne Mountain Zoo event. At this event, CAI Southern Colorado members and their families get to enjoy the zoo all to themselves. We will have a BBQ dinner and lots of fun for the whole family.

A big thank you to our Committee Volunteers & Sponsors; you are truly valued and appreciated. ♦



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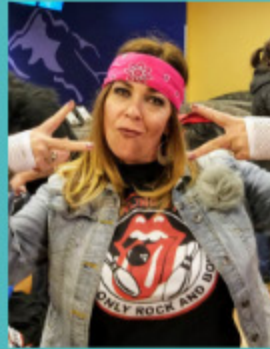
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In the hallway of my office building we have a large dry erase board which we use during our annual meeting season to reserve the projector or classroom. The remainder of the year it is often used as a place where we connect with our coworkers in more thoughtful or comical ways.

Often, we have labeled the top of the board with a thought-provoking question or statement such as:

"I feel lucky when...."

"Some of my favorite jokes are..."

"If I had an intro song every time I walked into the room, it would be..."

This is where we take just a few seconds to breathe, think outside of the box, and anonymously leave comments that coworkers try to guess who wrote it.

Most recently the board has been very amusing. "Without us, your neighborhood could look like this!" was the statement posed at the top. Added to this was a sketched neighborhood of townhomes and some single-family homes. Not one of us would claim to be Picasso but we did understand (mostly) that it was a neighborhood. The instructions were to add to the picture, neighborhood violations that occur while listing them below with corresponding numbers. It hasn't even been a month, and everyone has had a great time (maybe more than we should) with the board. Here are the violations listed:

1. Dog running loose
2. Dog doodie
3. Garbage cans blown over/trash everywhere
4. Cars parked illegally (fire hydrant, stop sign, etc.)
5. Boarded up windows
6. Pumpkin Patch in the front yard
7. Volkswagen with Christmas décor; front lawn parking
8. Peach house with pink fence
9. Year-round holiday décor
10. Dead everything except weeds
11. A pig and chickens
12. Flag pole

13. Missing house number

14. Unstacked wood pile; there for nearly seven months

15. Graffiti

16. Broken fences

17. Abandoned trailers

18. Raccoon on the loose

19. Dented garage door

20. Super bright spot lights

21. Constant Barking 24/7

This is not by any means, a comprehensive list. Some were not so confident in their drawing skills and others didn't even know where to begin. Other issues were homeowners "making improvements" without submitting a site improvement application, woodpecker pecking, retaining walls falling, missing sprinkler heads spewing, and while some of those are not violations, we do bring solutions to these as well. All of these are just for April!

Sometimes it is hard to feel like you are making a difference. Addressing the same angry emails and phone calls from residents can follow you out the office door even though you locked it up on Friday. Residents, upset because they suddenly realized (upon their 3rd delinquency notice) that they are supposed to pay assessments? Let us not forget the out-of-their-mind anger as residents realized their neighbors' fence had shifted one inch onto their property! And let us not ignore the threats such as: "I will park in my garage or driveway ONLY after you fix the roads in the neighborhood!!!!" Yet another task to inform the resident that the county is responsible for the roads and would be very upset if we took it on ourselves to mess with the roads or put up signs.

This month the dry erase board allowed us to let off some steam and be creative, be encouraged by one another and be reminded that we are not the only ones dealing with crazy stuff. But unless want we Google Earth to capture a live version of our illustrations we need to remind ourselves we all really make a difference! ♦

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A DAY IN THE LIFE

One of the benefits of living in a covenant community is that when your neighbor is doing something they shouldn't, you can contact the management company and let them deal with the uncomfortable confrontation. You get to continue having friendly encounters with your neighbor, and while there is a process that does take some time, you may even get to hear how ridiculous the HOA is for sending them a letter!

Often a resident will quietly correct their infraction without so much as a response to the manager. Then there are those that silently ignore that they have committed any violation and eventually will get invited to a hearing to explain what is preventing them from compliance. In one such case, a single-family home had a pile of firewood near the garage door and strewn across sections of their yard and driveway. A courtesy letter was sent to inform them that this was not allowed. The pile was so close to the side yard gate, which could have easily concealed the pile from governing eyes, but no response was received and the pile remained unmoved. After months and additional letters, the owner was invited to a hearing. The gentleman did not show up, but on the day of the hearing he did send an email, that was creative. It started with fake designations and included that the email was to be received by the "Crimes Against Humanity Division" in a made-up district court. The content is as follows (names have been changed):

Dear Judge Anderson,

I am writing this letter in response to the accused crimes against humanity. It was brought to our attention that a delivery of firewood was in direct violation of Article III, Section 3.8 of the Declaration. It was never the intention of such actions as to potentially smudge the perfect image of Pleasantville. We ask that the Judge, Jury, and Executioner grant us a Stay of Execution and review the attached picture. As hardworking Americans, we greatly appreciate your time and consideration regarding such important matters.

Thanks.

This email gave all of us a nice laugh. I bet you are wondering if mercy was granted for this sarcastic delayed response. I believe a ton of mercy had been granted for months, from when the wood first appeared, and then seemed to increase in size and mess since the first courtesy letter. I'm not sure sending this kind of response as his first communication about the problem is the best move. What about the neighbors who, day after day, look at this eyesore in their neighbor's driveway? The outcome? The board gave the owner a deadline to have the pile moved out of sight... and it was moved by the deadline. This is another case of best to let management confront the problem in hopes that some amount of unity can be preserved in the community!



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...(continued from page 1)

damage within a few months after the damage occurred. In all cases, however, the courts have found that if damage is not reported “promptly,” the insurance company may be able to deny the claim in its entirety. This has given insurance companies a lethal advantage.

These court rulings are of specific concern to multi-family communities because many hailstorms are not as obviously destructive as the one that hit the Colorado Mills. Instead, storms often damage roofing systems multiple stories off the ground and leave little evidence of damage to those observing from ground level. Because hailstorm damage is not always obvious, and the consequences of failing to report damage promptly can be significant, HOA owners, members of the Board of Directors, and management would be wise to implement measures that allow for the prompt discovery and reporting of hailstorm damage. In addition to being exceptionally vigilant and diligent in discovering and reporting damage, owners, Board members, and management should also be educated on when to investigate possible storm damage, even when such damage is not immediately visually apparent, so that insurance claims can be discovered and “promptly” made.

Contingent Management Fees

While HOAs must focus on prompt reporting of a loss to the insurance company, other trends in insurance law have put a spotlight on how HOAs handle insurance claims once they are reported. Many HOAs handle insurance claims through assistance from their management companies. Some management companies help manage the claim and are compensated with a percentage of the total amount of the claim ultimately paid by the insurance company because the work performed is outside of their regular duties as property managers. While this takes the grunt-work off the back of the Board of Directors and means that HOAs do not have to pay out-of-pocket for the (sometimes voluminous) work that goes into making an insurance claim, these contingency-based agreements have also created an opening for insurance companies to attack the legitimacy or amount of the insurance claims. From the perspective of the insurer, when a management company has a contingent interest in the outcome of an insurance claim, the insurance company may attack the validity of the claim by arguing that the management company has an interest to inflate the claim. While these agreements are not improper, rest assured, insurance companies are learning about our industry and are using certain trends against HOAs in litigation.

Notably, this contingent-fee “issue” shows up in other ways in some insurance-related disputes. For example, Public Adjusters, like management companies, also often forego immediate payment in lieu of a percentage of the

amount of the claim ultimately paid by the insurance company. Similarly, some contractors may agree to repair the damage for whatever amount the insurance company ultimately decides to pay, regardless of the true value of the work. Some insurance companies argue that these contingent-type fee agreements also create the appearance of improper claim inflation. Regardless of its truth, this appearance can be damaging to the claims process and can create a significant roadblock to the policyholder collecting the full value of their claim.

Counterclaims

With insurance losses on the rise and insurance companies learning more about the business relationships between HOAs, management companies, and other entities assisting with the insurance claim process, some insurance companies are turning more and more to scorched-earth tactics to intimidate policyholders and avoid paying out on valid insurance claims. In perhaps the most significant modern trend in Colorado insurance law, insurance companies have been attempting (sometimes successfully) to turn an HOA’s failure to report a claim within a “reasonable time” (regardless of the HOA’s knowledge of the damage) and the HOA’s payment of contingent fees to entities helping with such claims, into counterclaims based on allegations of fraud or misrepresentation. Most insurance policies have clauses that allow insurance companies to terminate their policy, and even recoup insurance benefits that were previously paid out should such conduct be proved to occur. The typical allegations are that the HOA policyholder and its agents are inflating the claim or withholding relevant information from the insurance company.

Not surprisingly, allegations of fraud against an HOA are highly damaging both to a community’s ability to recover on a claim, and to the HOA industry in general. These counterclaims are changing the perception courts and laypeople have about insurer-insured disputes, suggesting the insurance company is the “victim” and the HOA is the perpetrator. Most importantly, insurance companies’ newfound boldness in bringing these fraud counterclaims, and their current success in doing so, has, from all appearances, inspired insurers to continue their practice of disputing and/or refusing to pay on legitimate insurance claims.

In order to more easily navigate the insurance claim system in light of the modern trends in Colorado’s insurance law, homeowners, Board members, and managers must strive to educate themselves on best practices in handling their insurance claims to prevent insurance companies from gaining additional leverage in court. With the concerns noted above in mind, multi-family communities are poised to turn the tide on insurance-related claims throughout the Front Range and Colorado in general. ♦




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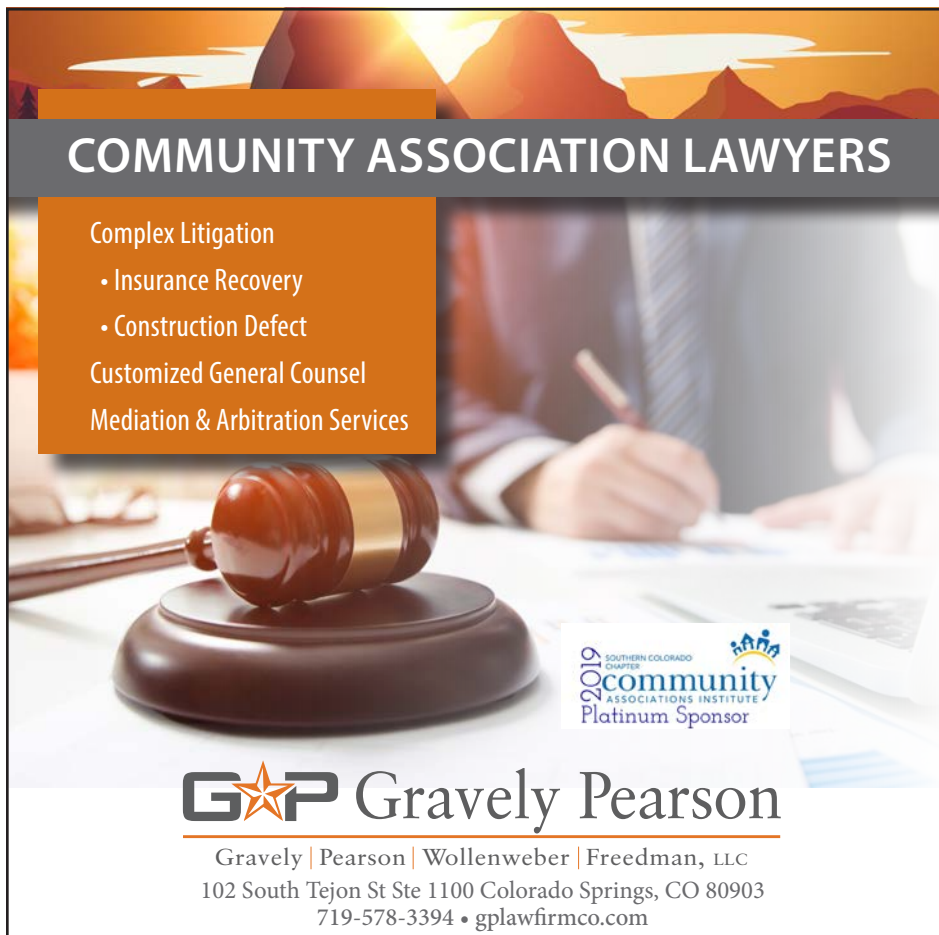
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CLAC Update

By Brandon Helm, CMCA®, AMS®, PCAM®, 2019 CLAC Chair

On Friday, May 31st, Governor Polis vetoed the CAM licensing bill, HB1212, along with three other licensing bills and two unrelated bills - you can read the Colorado Sun's coverage of the Friday night vetoes [here](#). HB1212 would have extended the current CAM licensing program for one year to allow stakeholders to meet over the summer/fall and come up with a new structure that would work for everyone.

Governor Polis issued a [veto statement](#) about why he vetoed the bill along with an [executive order](#) for a broad scope review to be performed by DORA regarding regulation of HOAs and CAMs.

As of July 1, 2019, the CAM licensing program will no longer exist. This means that you will not have to renew your license. We do hope that managers in Colorado will continue operating under the standards created under the original statute by continuing your education through CAI.

You can read our CAI CLAC media release regarding the veto [here](#).

CAI and CLAC thank you for all your support over this legislative session. We'll be back in touch with updates regarding the executive order and next steps as we have them. ♦

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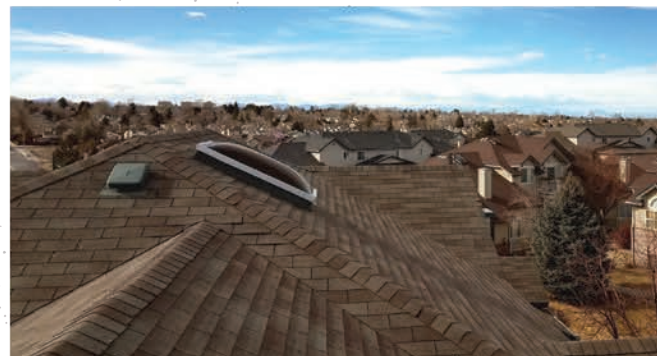
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Building Community Culture Like a U.S. Marine—Oorah!

By Brian Zimmerman, Premier Roofing

As companies struggle to attract and retain high-performing talent, recruiters often sell company culture above other benefits—this is especially true of technology firms. Why lead with culture? Simply stated, we all want to feel that we are valued and that we add value. We desire belonging, creative collaboration and the joy of working together for a common goal—much like a community association or like the Marine Corps!

I served in the U.S. Marine Corps from 2000 to 2004 and reserve duty from 2004-2008. When I think of building community culture, I am forever reminded of the core values that I upheld with the great pride alongside my fellow U.S. Marines. A culture deeply rooted in *honor*, *courage*, and *commitment* of a few good men and women sold out to a common mission—to be great and to be ready to serve!

Serving in the United States Marines has been one of the most significant encounters of my entire life. The values, discipline, and character developed in me are immeasurable. As I continue to expand my corporate career and engage leaders at every level, I can see how the Marine's core values and leadership principles are woven into the culture of many corporations—the verbiage may be different, but the rich meaning and impact are present.

Where culture is lacking in communities and corporate structures, when allowed, I share my experiences and the evidence of these values in my life and professional career. I want to share those values, principles, and courtesies with

you to help build culture in your community,—they work effectively wherever they are applied.

Serve for the Right Reasons

Although we don't lead and serve to be awarded or praised, the recognition is encouraging, and it reminds us that our labor is not in vain. While serving in the Marines, I trained and prepared more than 1,000 marines for combat in Iraq. The recognition, being decorated and receiving a Navy Accommodation medal fueled my drive to do more and to be a better leader.

I learned a lot from the leadership training on building a team and creating a culture by following the Marine Corps' leadership traits and core values, which I believe can apply to regular life and business primarily as a community manager.

Marine Corps Core Values

- **Honor**

The Marine Corp upholds the principle of doing what is right—even when no one is around. I won't rehash some of our nation's past deceptions of 2008, but we can learn from those experiences how doing the wrong thing can lead to hardship for thousands and prison time for a few.

As a community manager, leading with integrity in your conversation and behavior encourages others to follow suit and creates a culture of honesty.

Honor also speaks to how one honors him or herself and others. When people feel they can be honest about their roles and responsibility even when lacking, they will be quick to take ownership of their roles and correct behaviors that may not support the common goals of the community.

- **Courage**

Anything worth having is worth putting in the necessary work to see the project through to completion. When community managers demonstrate courage during hard times—times when your greatest plans fall through or those who signed up to help suddenly disappear. That's when courage must rise from your inner core stirring you to forge ahead in spite of being let down by others.

When you can muster the physical and mental strength to endure the challenges of building your community, the forces that be, have a way of sending the right support just when you need it most. Never quit—never surrender; help is just around the corner.

- **Commitment**

Your greatest responsibility is to yourself and your family. However, your decision to become a community manager requires a commitment to

others. Commitment is not something that we give when it feels good. Oh no!

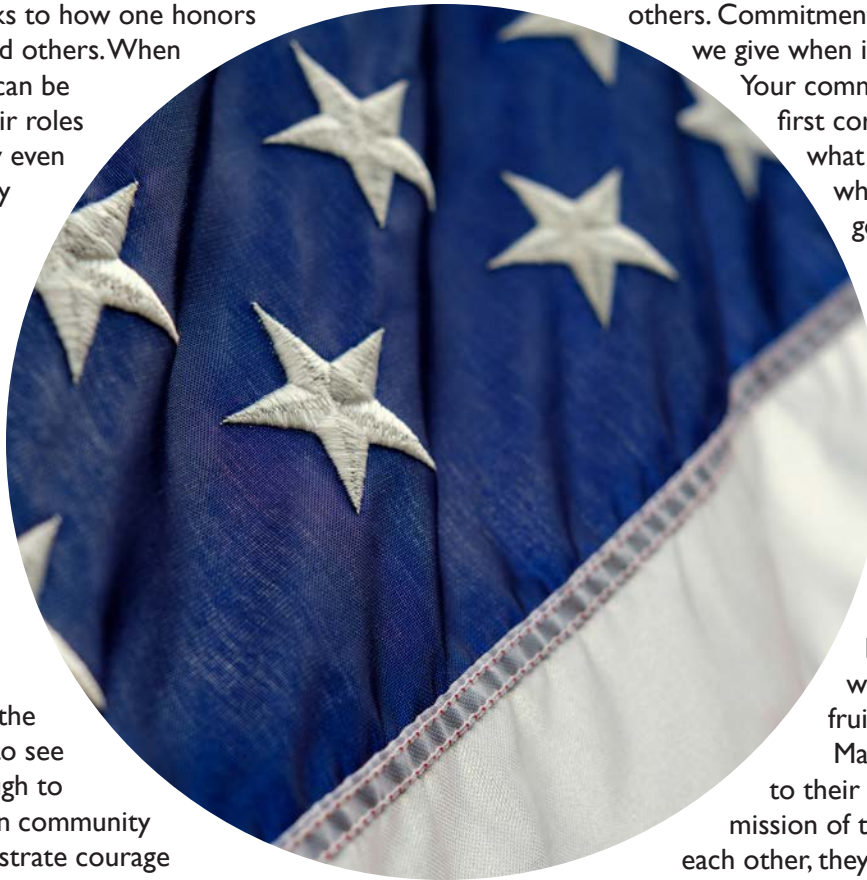
Your commitment is sealed in the first core value—**honor**—doing what is right and doing it even when it seems everything is going wrong.

As a community manager, you are revered and respected for *choosing* to serve your communities and community; choosing to be the one to carry the vision of the community or development and to share its mission/ blueprint to others who will help bring it to fruition with you.

Marines commit themselves to their unit and the shared mission of their unit. Without each other, they could not accomplish their goals. If you feel your hands getting weak as you work diligently to build culture in your community, ask a teammate to hold up your arms, but don't give up on your commitment.

The language of a courageous community manager is **we can** because the truth of the matter is that you need your team and your team needs you to accomplish your community goals. And you don't need an entire complex—just a few—proud individuals who want to make a difference in their communities.

This list is by no means exhaustive, but I hope it will inspire and stir your creativity. I'd love to hear your feedback. What strategies are you using to build culture and connection in your community, subdivision or complex? ♦



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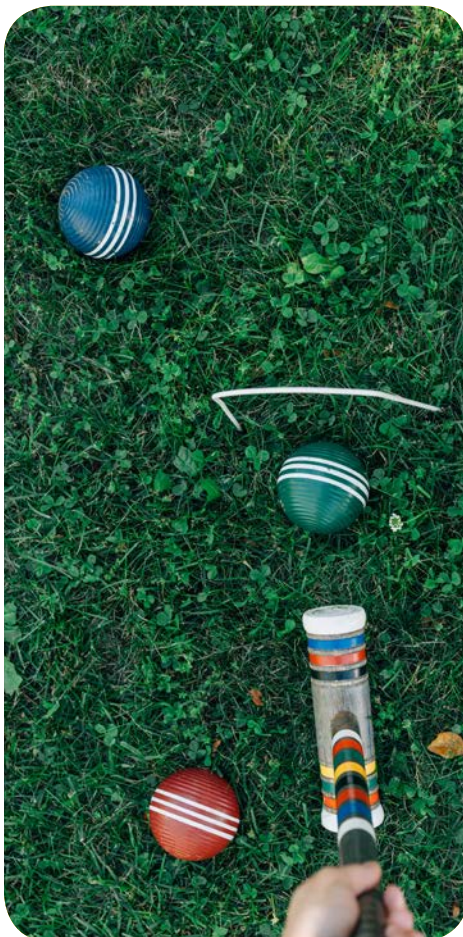
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Bioengineered Living Shorelines: The Newest Erosion Control Solution

By J. Wesley Allen, Environmental Scientist and Regional Manager at SOLitude Lake Management

When development companies design community associations with lakes and stormwater ponds, they envision them as beautiful aquatic resources to attract homeowners, connect with nature and enhance the surrounding property. However, without proper management these waterbodies can quickly become eyesores that produce harmful algae and bad odors, lead to damaged and eroded shorelines, and result in displeased community members.

Most aquatic management professionals will tell you that when a property manager calls about an issue at their waterbody, it's often past the point of a quick fix. This is regularly the case when we arrive onsite to look at an erosion issue on a lake or pond embankment. Rather than finding a few problematic patches of rock or soil, we discover steep, unstable banks, deep washouts and extensive bottom muck caused by years of sedimentation.

Erosion is a natural process caused by wind, rainfall, poor design, cultural impacts like mowing and recreation, or simply an aging aquatic ecosystem. These erosion issues are all exacerbated by human disturbance. Unfortunately, erosion can also negatively affect your lake, stormwater pond, canal or coastline by causing loss of habitat and property value, nutrient loading, reduced storage volume and waterbody depth, and excess runoff. When topsoil is displaced,

stormwater pipes and structures can be exposed and damaged. Overtime, erosion can lead to the formation of trenches and gullies that pose a serious danger to the public.

There are many ways to correct erosion with rip-rap, bulkheads, and other hard armoring systems; in certain situations, they may be the preferred option. In my experience, however, reestablishing the embankment utilizing vegetation, whether turf grass for recreation or native vegetation for habitat, has always been an excellent way to halt erosion and enhance community waterbodies. There are several best management practices that can help stop erosion and establish vegetation, but a lot

of them have a shorter life-span or planting restrictions. Fortunately, there is a new solution available for both the immediate and long-term stabilization of shorelines and hillsides.

Bioengineered living shorelines are the latest technology in erosion control.

These patented woven systems offer an innovative, environmentally-friendly solution to immediately stop

shoreline and embankment erosion and create a natural foundation for vegetation. The most effective systems available are designed using a combination of ecofriendly, biodegradable burlap sock-like fabric and heavy-duty knitted mesh. The socks can be filled with local pond muck and sediment, which is why many property



managers choose to pair this solution with proactive hydro-raking projects. After the woven mesh systems are filled, they are then secured to the embankment and can be immediately sodded, planted with native beneficial buffer plants, or seeded through the mesh and fabric layers.

As an Environmental Scientist, I've utilized several different shoreline restoration techniques over the years, but this innovative system is certainly creating some excitement! It provides immediate stabilization while effectively filtering and buffering run-off water, removing harmful contaminants and benefiting waterways and water quality, all the while providing a seamless planting platform and long-lasting erosion control. Restored banks and hillsides can be walked on within just a few days, making bioengineered shorelines a fast, aesthetically-pleasing and long-lasting solution for most properties.

Depending on your waterbody and specific erosion issues, goals and budget, your lake management professional may recommend other natural restoration tools. Lakes and ponds that experience heavy water movement may be suitable candidates for erosion control using logs comprised of coconut fibers. Installed in areas with direct water flow, these biodegradable logs can help redirect water movement while reducing erosion along delicate banks. Coconut "coir" logs are biodegradable, compact and excellent solutions for properties in need of a truly custom erosion control approach.

Whether you decide to move forward with a complete shoreline restoration or are several years away, it's imperative to properly budget and integrate proactive management strategies that protect your banks and hillsides, while preserving the water quality of your aquatic resource. Cultivating a beneficial vegetative buffer with flowering native vegetation will help stabilize soil during rainstorms. Deep-rooted flowering plants can also help pull excess nutrients from stormwater runoff, preventing the growth of nuisance weeds and algae in the water resource. Undesirable nutrients can be further combated with the professional application of naturally-occurring nutrient remediation products, which permanently "lock up" and prevent nutrients from fueling aquatic weeds or algae.

Just like lawncare, lake and stormwater pond management is an ongoing commitment that requires different approaches throughout the year. While no two waterbodies are the same, each and every aquatic ecosystem is susceptible to shoreline erosion and can benefit from custom management plans that integrate buffer management and nutrient remediation, as well as other sustainable tools like hydro-raking, aeration, biological augmentation, and regular water quality testing. Whether your waterbody is in its prime or has seen better days, contact your lake management professional to restore and prolong your water resources—starting with the shoreline. ♦



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