

tion issues, says Hindman. This leads them to demand too much of the board, he says. Members would probably be less demanding if they knew that board members were volunteers.

Next, review briefly how the board operates. Explain that the board holds board meetings during which they conduct association business. (Members may or may not be allowed to attend those meetings, depending on your association's rules.) Tell members that the association also holds an annual meeting of all members, during which they get a chance to participate, and that they get to vote for board members at that meeting. And tell them approximately when the next upcoming annual meeting will be held. In general though, try to keep this part of the orientation brief. You don't want to keep new members in the orientation for too long.

Finally, review the role of the management company, advises Shapiro. List the functions the management company handles, such as preparing an annual budget; recommending vendors and contractors to provide services like landscaping to the association and negotiating the contract with them; supervising all vendors and contractors; collecting assessments; following up with members who fail to pay assessments on time; maintaining bank accounts and financial records; organizing meetings; and otherwise carrying on the business of the association as directed by the board of directors, he says.

**6) Question and answer.** It's a good idea to keep the orientation to no longer than 90 minutes, and to reserve about 20 minutes at the end of the presentation for a question and answer period, says Grucza. This is a good time to make sure that the new members understand all that you've

tried to explain. It's a lot to absorb in one sitting. By taking the time to field questions, you'll save yourself problems in the future.

**Insider Says:** For more information on topics of interest to new members, the Community Associations Institute recently published a primer entitled, "An Introduction to Community Association Living." It's available free as a downloadable PDF file at: [www.caionline.org/excerpts/community\\_association\\_living.pdf](http://www.caionline.org/excerpts/community_association_living.pdf). ■

#### Insider Sources

**Paul D. Grucza, CMCA, AMS, PCAM:** VP Operations/Director of Training & Development, RTI/Community Mgmt. Assocs., Inc. AAMC, Mid-Cities Reg. Office, 1500 N. Norwood Bldg. C, Ste. 300, Hurst, TX 76054; (817) 857-1235; pgrucza@cmmanagement.com.

**Tom Hindman, Esq.:** Partner; Orten & Hindman, 11901 W. 48th Ave., Wheat Ridge, CO 80033; (303) 432-9999; thindman@ortenhindman.com.

**Fred Shapiro, PCAM:** CEO, SBB Management Co., 5728 LBJ Fwy., Ste. 300, Dallas, TX 75240; (972) 960-2800; f.shapiro@sbbmanagement.com.

## NEW LAW

### New Bankruptcy Law Benefits Community Associations

On April 20, 2005, President Bush signed into law the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*. This new law, most of which goes into effect on Oct. 17, 2005, makes it easier for community associations to collect debts owed by bankrupt members.

We'll tell you about four significant changes created by the new law that benefit community associations. Of course, the full impact of the law won't be known until new cases arise and courts apply it. We'll continue to keep you informed as that happens.

#### 1) Certain Members Must Pay Assessments Even After Filing for Bankruptcy

Under the old law, members who abandoned their units didn't have to pay assessments or fees that accumulated before they filed a bankruptcy petition, says Massachusetts attorney and bankruptcy specialist Laura White Brandow. But under the new law, bankrupt members remain liable for assessments and fees that accumulate before they file a bankruptcy petition, whether or not they live in their unit, as long as they still own it, she says.

#### 2) New Obstacles Make It Harder for Members to File Bankruptcy

The new law creates several new obstacles that make it harder for members to file for bankruptcy and get a court to eradicate their debt, giving associations more leverage to collect members' debts. Under the new law, before members can file for bankruptcy, they'll first have to undergo and pay for credit counseling, says Brandow. And before a bankruptcy court can eradicate any of the member's debts, the member filing for bankruptcy will have to

(continued on p. 6)

**NEW BANKRUPTCY LAW** (continued from p. 5) complete a financial education course, she says. (Courts can make exceptions for debtors who don't have court-approved credit counselors or financial education facilities in their immediate areas.)

### 3) More Bankruptcies Treated as Reorganizations

Under the old law, members were able to decide whether they wanted to file a "Chapter 7" bankruptcy or a "Chapter 13" bankruptcy, subject to certain restrictions in the Bankruptcy Code. A Chapter 7 bankruptcy is a liquidation bankruptcy in which the member seeks to wipe out as many of his debts as possible. A Chapter 13 is a reorganization bankruptcy in which the member creates a plan to allow him to pay off his debts over a period of time, Brandow explains. Associations generally prefer that members file reorganization bankruptcies, because with such bankruptcies, they have a better chance of collecting the money that's due.

But under the new law, a judge will decide whether the member can file a liquidation or reorganization bankruptcy, explains Brandow. In making this decision, the judge will apply what's called a "means test," explains California attorney James

A. Judge. Under the means test, if the member earns more than the median state income and has at least \$166.67 more monthly income than he has monthly expenses, he'll have to file a reorganization bankruptcy, or no bankruptcy at all, Judge says. If he earns more than the median state income, has at least \$100 more monthly income than he has monthly expenses, and has enough income to pay 25 percent of what he owes to all of his unsecured creditors over five years, he'll have to file a reorganization bankruptcy, or no bankruptcy at all, he adds. These new standards will very likely lead to more Chapter 13 filings than there were in the past, Brandow says.

### 4) 'Homestead' Protection Limited

Some states provide what's called a "homestead" protection for real property owners, including community association members. A homestead protection allows members to protect the equity in their units above the amount of their mortgages and any other secured liens. So in states where an association's assessments aren't considered a secured lien, the homestead protection would create a problem for the association.

But the new federal bankruptcy law, in most instances, imposes a \$125,000 limit on homestead protection that applies even if the state in question has a broader homestead protection, Brandow says. So if a member's home is worth \$300,000 and he has no mortgage, he can only protect \$125,000 of it. Your association can sue to recover the remaining \$175,000, even if your state doesn't consider association assessments secured liens.

Unlike most of the new law's provisions, the provisions that relate to homestead protection took effect as of April 20, 2005.

**Insider Says:** Because the new bankruptcy law will make it harder for members to avoid their obligations by filing for bankruptcy—and because most of the law doesn't go into effect for another few months—experts expect a flurry of bankruptcy filings between now and Oct. 17, 2005. So be prepared for a busy few months. ■

#### Insider Sources

**Laura White Brandow, Esq.:** Marcus, Errico, Emmer & Brooks, P.C., 45 Braintree Hill Office Park, #107, Braintree, MA 02184-8723; (781) 843-5000; lbrandow@meeb.com.

**Jim Judge, Esq.:** The Judge Law Firm, 19900 Macarthur Blvd., Ste. 150, Irvine, CA 92612-8425; (949) 833-8633; james@thejudgefirm.com.

#### LEARN MORE About Community Association Management Issues!

Join **Community Associations Institute (CAI)** and receive the following benefits of membership:

- Subscription to *Common Ground*, CAI's bimonthly award-winning magazine
- 40% discount on CAI's extensive library of more than 100 publications
- Free membership in your local chapter and a subscription to the chapter publication
- Member discounts on education seminars, professional management development courses and national conferences.

Call (888) CAI-4321 or (703) 548-8600 (M-F, 9-6:30 ET) to request a free membership kit, or visit [www.caionline.org](http://www.caionline.org) for more information!