



**Clayton & McCulloh**

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## C & M Update

A complimentary e-mail update for our  
Community Association Clients and their Managers

Volume 1 - 2010

Clayton & McCulloh, P. A.

Orlando Office: Maitland

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### COMMUNITY ASSOCIATION TITLE (CAT) MORE THAN A TITLE COMPANY

By Paul S. West, Attorney & Counselor at Law

It is now official! On August 16, 2009, Community Association Title, Inc. (CAT) received its license from the State of Florida to begin conducting real estate title services in the State of Florida for the general public. CAT was created by law partners, Ken Clayton and Neal McCulloh, specifically with the Homeowner Association (HOA) and Condominium Association (COA) owners in mind.

For the majority of Americans, the purchase of a home represents the largest single financial transaction they will ever face. Why would they proceed without the assistance of an attorney? Moreover, why would they proceed without the assistance of attorneys that have been practicing in the area of real estate law for over thirty (30) years?

CAT, under the direction of Ken Clayton, Neal McCulloh, and their team of real estate attorneys, stands ready to assist you in the sale, purchase, development, or re-financing of real estate anywhere in the State of Florida. Here's how CAT stands poised to assist you in the increasingly intricate real estate market.

- We Understand Community Associations As our name suggests, we understand community associations. If you belong to an HOA or COA, we have the advantage over your typical title company, inasmuch as we understand from a legal perspective how community associations are created and how they operate and function from month to month. Our attorneys have had the pleasure of representing over 750 community associations throughout the State of Florida in all matters that are unique to association life. As you prepare to sell or buy a home located in, and governed by, an HOA or COA, you want someone with experience who will be able to guide your transaction to a pleasant and successful closing.
- We, as Members of Attorneys' Title Fund Services, LLC, Employ Only State-of-the-Art Technology As members of Attorneys' Title Fund Services, LLC (The Fund), CAT has access to the largest title agency in Florida owned and operated by attorneys. Also, as members of The Fund, CAT utilizes only state-of-the-art technology. With more than 900 million public records, The Fund's Automated Title Information Data System, ATIDS®, is Florida's largest repository of title information, and with the new functionality and user-friendly interface of ATIDS XE®, and ProPel®, The Fund's electronic document delivery system, CAT can provide a title commitment to you within hours instead of days like some title companies.
- We Keep Abreast of Changing Federal and State Law: Federal and state laws governing real estate closings are constantly changing. HOA and COA consumers need a closing agent who fully understands and who will professionally and successfully navigate through these changes,



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## NO PARKING!

By Jeff A. Stone, Attorney & Counselor at Law

There are many reasons why a Community Association may want to prevent individuals from parking on the public streets within the community. It may be for aesthetic purposes: the fewer automobiles that are parked on the street, the more open the community may appear. Perhaps the Association is concerned that allowing individuals to park on the street presents a safety hazard by making it difficult for drivers to navigate an already narrow street. Whatever



the case may be, Clayton & McCulloh generally recommends against Associations attempting to restrict or prohibit individuals from parking on public streets, even if an

Association's Declaration contains provisions which purport to authorize the Association to regulate parking within the community. The primary reason is that neither the Association nor its members own the public streets. Rather, the streets are owned, regulated and maintained by the government. As a result, an Association may incur risk and liability by attempting to restrict or prohibit parking thereon.

Hopefully, an Association can appreciate that by virtue of the streets being public, the Association legally has no right to prohibit a non-owner from parking on the public streets. In regards to owners, the only claim that an Association ostensibly has is that, while the owners had a public right to park on such streets, they voluntarily relinquished that right by purchasing a lot in the community. In other words, once they chose to purchase in the community, they were bound by the Declaration and agreed to its covenants and restrictions, including a commitment not to park on public streets within the community. Moreover, an Association can argue that the Declaration constitutes a covenant running with the land and that each owner should have been aware of the parking restriction by virtue of same being set forth in the Declaration which has been recorded in the Public Records.

Therefore, while such owners had a public right to park on such streets, they voluntarily relinquished that right by written agreement (i.e., the Declaration). However, although an Association may want to enforce parking restrictions based on its Declaration, the local government has not consented to, joined in or agreed to the Association regulating such public streets. Therefore, an Association may incur risk and liability by attempting to enforce parking restrictions on public streets, even if those restrictions are contained within its Declaration. For example, any owner could argue to a court that the Association lacks any basis or right to regulate and control such streets, since the streets are owned by the government and that the government has not consented to the Association's parking restrictions. It is important to understand that the Declaration, which constitutes a covenant running with the land, does not bind and does not technically cover the streets. Rather, it covers the lots and Association property and common areas.

Therefore, an Association must understand that, except for any provisions within the Declaration, an Association has no claim that it has any right to regulate parking on the public streets. Moreover, despite it being in an Association's Declaration, (1) an Association does not own such streets, (2) an Association does not control such streets, (3) an Association has no dominion over such streets; and (4) an Association really should not have any rights to regulate such streets by virtue of its lack of ownership.

Given the above, Clayton & McCulloh recommends not only that an Association forgo enforcing parking restrictions on public streets, but also that the Association inform its membership why it will not be enforcing such limitations. We further recommend that the Association amends its documents to eliminate any provisions restricting parking on public streets. 



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## SECURITY CAN BE "LIFE OR DEATH" MATTER FOR ASSOCIATION BUDGET

By Terry Ottinger, United Security Alliance, Inc.

**C** **Crime, Vandalism, and More**—Talk to any property manager or board member and you will hear a list of similar concerns ranging from vandalism and property damage to various criminal activities and theft.

Those who are involved in running or managing community associations deal with these issues and the associated cost involved in these problems every year.



Communities today are also dealing with a new set of challenges. The turbulence in our economy, mortgage foreclosures, and layoffs have led to a higher

rate of delinquency on assessments and are putting pressure on many association's budgets. At the same time, there is an increase in criminal activity and theft. This combination of events has made community security and the elimination of the associated losses and costs more important today than ever before. I served as the president of my own association for five years. I also am the founder and president of a security business that for over 23 years has been working with many different community associations. During that time, we have found that security is a top concern of associations as is the impact of security related issues on the budget. I cannot tell you how many times we've heard boards and managers say: "These incidents of loss and repair costs are killing our budget." Perhaps this article will explain some of the basics of security and how certain security measures can actually have a positive impact on the budget.

**Video surveillance** commonly referred to as CCTV cameras, have been used for over a quarter of a century, and the benefits have been well

documented. Vandalism, property damage, and theft have traditionally been fought with CCTV video surveillance systems.

However, the technology behind these systems has changed dramatically during the last 25 years. Unfortunately, many communities



have older, outdated technology or systems that do not produce quality usable images or cannot get a good picture of a vehicle tag when needed.

Systems today are so much more than a method of watching for or gathering evidence to aid in the prosecution of theft. There is no denying that the basic benefits of video surveillance remain intact, but systems are easier to manage than ever before.

**Access control systems** for gates, clubhouses, pools, or other amenities used to track usage by residents and control the unauthorized access and usage of these facilities by non-residents has historically been a separate or "independent" system. Today integrated systems are common where the video surveillance is integrated with the access control. This integration tightens the security into one seamless package that has proven to eliminate many previously uncontrollable security issues.

Today's IP connected systems allow management companies, property managers, and board members to do everything they need to do remotely. IP technology allows cameras and other systems, such as the access control, to be seamlessly connected over an IP network or the Internet. Connecting remotely using an Internet browser, these systems are secured with user name and password, making managing these systems faster and easier. Property management companies are now offering security management for their clients as an additional service.



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## MORE THAN A TITLE COMPANY

### Title Company, from pg 1

thereby promoting confidence and ease-of-mind to their clients and insuring compliance in every detail. For example, all real estate closings that are governed under RESPA, effective January 1, 2010, will be required to track on the HUD-1 Settlement Statement (i.e., the closing statement) the difference between closing costs that were estimated at the time of application on the Good Faith Estimate (GFE) and the final closing costs charged to the borrower at the time of closing. By selecting CAT and our team of attorneys as your closing agent, you will have the comfort of knowing that a knowledgeable attorney will keep all of your closing documents in compliance with new laws.

- CAT's Closing Costs Are Competitive with Other Title Companies What will you end up paying to have professional real estate attorneys at CAT close your transaction? You will be pleasantly surprised to learn that CAT's closing costs are comparable to those of other title companies. Since the State of Florida promulgates the rates title insurance agencies can charge on owners' policies and lenders' policies, the cost for title insurance will not change from one closing agent to another. They are 'set in stone.' While other title related charges, such as title search charges and closing fees, can change from one closing agent to another, CAT prides itself on being highly competitive with other title agencies.
- CAT's Attorneys Can Give Professional Legal Advice Although many people will be happy to inject their opinion, an attorney is the only one qualified to give legal advice—and legal advice is just what you need when you are buying or selling a home. Many legal issues can come up that need to be addressed by a competent qualified attorney: Do I have to go through probate before I sell my home if I am named as the sole beneficiary in my mom's and/or dad's will? What are my income, estate and gift tax consequences when I sell/when I buy? What is the status of my title? Is it free of defects and exceptions? What is a "seller's latent

defect disclosure," and what sort of things do sellers have to disclose to buyers without being at risk for a lawsuit? How do you handle financing contingencies, inspection contingencies, or contracts contingent upon the sale of the buyers current home?

And when you are confronted with a legal problem prior to closing, who best to navigate through those uncertain legal waters than an experienced real estate attorney.

#### Summary - More than Just Another Title Company

You can hire either a non-lawyer title agency, or you can hire CAT and it's team of professional real estate attorneys to handle your real estate sale or re-finance closing. Both will cost you about the same. The benefits to having CAT and our real estate attorneys handle your transaction are that:

- We know and understand community associations;
- As members of The Fund, we employ only State-of-the-Art Technology and can issue your commitment within an hour or two instead of 'within days;'
- We keep abreast of Federal and State real estate law;
- We cost about the same as other title agencies; and
- We can give professional legal advice!

Furthermore, as attorneys, we can prepare the purchase contract; we can resolve any title or inspection issues; and we can give legal advice throughout the transaction. A title agency that isn't affiliated with a real estate attorney cannot do any of these things. Whether or not separate attorney fees will be charged, such as formal administration probate fees, depends on each situation. Typically, if CAT acts as the closing agent and provides the title insurance, the cost will be no more than what you will pay at a non-attorney title agency with the advantage of having a professional licensed attorney walk with you every step of the way.

Given all that's involved during the real estate process—your home, your money, your peace of mind—hiring CAT and their team of professional attorneys is one of the wisest things you can do to protect your investment!



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## SECURITY CAN BE “LIFE OR DEATH” MATTER FOR ASSOCIATION

### Security, from pg 3

**Video monitoring** is another feature now available with IP based video surveillance and access control systems. Remote video surveillance, with monitoring in certain situations, can remove the



need for a dedicated on-site security room and full-time security personnel at every community. Having a centralized security team monitor events in real-time across the

Internet may provide a more rapid and targeted response when required. Remote video monitoring and recording is growing in popularity and widely used to reduce the number of false alarms, and it helps to qualify a security situation at an early stage, reducing the need for expensive call-outs from the police or private security firms. Some communities have been able to reduce or eliminate the human guard service in favor of these remote guard services now available thus saving tens of thousands of dollars annually.

**Digital evidence** provided by networked video surveillance offers the flexibility of digital media on which it is based. Video clips or images can be easily sent via email to police or security personnel. Circulating this information to other retail locations quickly could provide a rapid and proactive approach to preventing crime. The IP approach also puts the video evidence out of the reach of the criminal. Video and images are recorded in real-time and then stored securely on the hard drive or off-site so they cannot be accessed or tampered with by any intruder, ensuring evidence remains secure, untouched and court-admissible.

**Intelligent, event-based surveillance** enables businesses to adopt a more targeted, event-driven approach to security. IP cameras can be linked to key areas within a community, such as gates, doors, pool, exercise rooms, clubhouses, or entrances

and exits and configured to automatically activate and record when access is granted or events occur for a more intelligence-led security platform.

Positive budget impact may sound like a contradiction in terms when it comes to acquiring security. Through the elimination of theft, vandalism, property damage, and the associated repairs, however, associations have discovered that video surveillance and access control systems can literally pay for themselves and save substantial amounts of money. Other positive impacts can stem from the elimination of unauthorized access to community assets like pools, clubhouses, and recreational areas. Some communities are using the access control system as a collection tool by restricting a particular resident's access to certain facilities when they are late or delinquent in paying their assessments.

Now capital outlay programs are being made available by a few select systems integrators who work closely with community associations, allowing immediate access to the latest technology without a large initial budget impact. These companies not only specialize and provide video surveillance and access control systems, but they offer turnkey solution based programs.

Associations find turnkey solutions attractive. A good turnkey solution should include a free analysis of security related needs and a free site survey and system design. A knowledgeable company representative should be available to meet with and explain the solution options to the board of directors. Then if approved, the systems integrator should agree to purchase all required equipment, provide and cover all costs related to installation, provide operational training and ongoing 24/7 on-site service, maintenance, and warranty. As newer technology becomes available, you should have the option of upgrading the system so you don't find yourself stuck with obsolete equipment in the future. All of this and



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## SECURITY CAN BE “LIFE OR DEATH” MATTER FOR ASSOCIATION

Security, from pg 5

more is available from select systems integrators, and all the community association pays is a fixed monthly fee, similar to any contract or utility service.

These “all-inclusive” programs are overwhelmingly popular now because they provide a turnkey program without the capital outlay normally associated with these projects. This allows the technology to eliminate the losses, pay for itself, and typically save most association’s thousands of dollars annually. Additionally, these programs that include all service and maintenance costs can prevent hidden or unexpected repair expenses in the future.

Don’t gamble with your security—associations and property management firms have expertise in the management and operation of their communities. With the advancements in IP networked video surveillance and card access technology, however, it would be a gamble to invest in this technology without obtaining the support of a true security specialist. There are a number of companies who can offer you this new technology. However, only those providers who specialize and have experience in community associations will have required expertise to properly design and implement this technology, which will actually provide a solution to produce results. Selecting the right company may be the most important action you’ll take in route to discovering the financial advantage that can be obtained through this new technology. ★

### Tip for Directors

**There are two kinds of mistakes: little ones and big ones. The little ones, the company can absorb. The big ones absorb the company.**

**--Norman Feldman**

## C&M CONTINUES HOSTING FIRESIDE CHATS-NOW OFFERED FOR TWO CEUs TOWARD CAM LICENSE!

Clayton & McCulloh continues hosting our popular Fireside Chats throughout Central Florida--- discussing the new trends in collecting assessments owed to your Association. This informative



evening will educate Board Members and Managers of the new methods, case law and other aspects of collections, as well as the new method available to collect assessments directly from

tenants. You will also have many opportunities to ask questions throughout the program. Attention Managers: The Fireside Chats are now being offered to managers for two (2) hours of continuing education credits toward your CAM license.

These programs are presented in small, informal venues that allow for a free flow of information exchange and plenty of time for you to ask questions of our attorneys. Take advantage of this opportunity to receive free legal advice.

Our first three programs in Melbourne, Clermont, and Kings Ridge were very successful. Our next program will take place at the Ramada Heritage Park in Kissimmee on Tuesday, June 22, 2010. Registration for this Fireside Chat is from 6:30 p.m. to 7:00 p.m., followed by the program from 7:00 p.m. to 9:00 p.m. The Palm Bay Fireside Chat will be held at the Quality Inn on Palm Bay Road on Thursday, July 29, 2010, with registration from 1:30 p.m. to 2:00 p.m., followed by the program from 2:00 p.m. to 4:00 p.m. Our Fireside Chat brochures are mailed approximately three to four weeks before each event. Limited seating, so call now to make your reservations! ☎