

## CAI Legal Brief Supports Homeowner Against Association

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Community Associations Institute (CAI) has weighed in on the side of a Vail, Colo., condominium owner who won a costly and contentious, seven-year court battle with his association over who was responsible for resolving a water-intrusion issue.

CAI filed a friend-of-the-court brief Sept. 30 in support of a ruling by the Eagle County District Court, which concluded that the association should pay \$550,000 in attorney fees and related costs in light of what the trial judge called the association's "stubborn refusal" to address the problem.

Noting that the association did its "best to increase the cost of this litigation to the maximum," the court ordered the association to pay the \$550,000 pursuant to the Colorado Common Interest Ownership Act.

Although the association accepted the August 2007 judgment pertaining to the repairs, it has appealed the award of attorney fees other related costs. According to court records, the original repair would have cost Booth Creek Townhouse Association about \$5,000—\$545,000 less than the ultimate judgment against the association.

**"The association could have mitigated the damages to the owner's unit and in the end avoided escalating costs for both the owner and the association,"** said **John D. Goodman of Goodman and Wallace, P.C.**, the firm representing homeowner E. Webb Bassick IV. "The association just refused to do anything at all. They chose to be obstinate and downright litigious, filing a counterclaim and blaming the owner. Now they object to the costs as unreasonable. We would not still be in court if they had just fulfilled their fiduciary obligation to the owner."

The CAI brief called the association's actions "extremely egregious," concluding that it's unheard of "for an owner to be forced to take several legal actions year after year for the sole purpose of forcing the association to honor its obligations and perform its duties...." Written by Denver attorney Lynn S. Jordan of Jordan Law LLC, the brief was formally submitted by attorney Gary H. Tobey of Tobey & Toro, P.C., of Centennial, Colo.

The case between Bassick and Booth Creek lasted more than seven years, in large part because the association filed more than 27 motions, including two unsuccessful attempts to dismiss the case.

Bassick filed a lawsuit after trying repeatedly—and unsuccessfully—to get the association to investigate moisture intrusion in his unit. According to court documents, Bassick first asked the association to address the problem in September 2001. Bassick sent 10 letters asking the association to investigate the source of the intrusion and make the necessary external repairs, Goodman said.

On two occasions, Bassick repaired interior damage caused by the moisture. However, he refused to make external repairs to the rotten wood window frame, window sill and structural supports for the window, claiming successfully that external repairs were the association's responsibility.

**"This ruling is important because it affirms that an association and its management cannot ignore their obligations to owners,"** Goodman told CAI. "The homeowner asked the association to enforce its own documents and they repeatedly refused despite expert recommendations and evidence that there was a problem."

The association claimed that it did not have to act because it was the owner's responsibility to maintain, repair and replace exterior common elements. "They also claimed that the association did not have to act because of alleged construction defects and code violations dating back almost three decades as well as acts of God in the form of mountain weather," Goodman added. "The court found that the association presented no evidence in support of these defenses."

The association's case was managed by attorney Ross Davis, who also served as a director and president of Booth Creek.

CAI has filed more than 30 amicus briefs on a wide range of legal cases that have posed significant questions in community association law. The decision on whether CAI should submit a brief in a particular case is made by CAI's Amicus Curiae Advisory Group. This group, along with other attorney members, provides pro bono support to review requests, draft and file briefs or argue in select cases.

"This activity is vital to preserve the legal rights of community associations and individual homeowners," says Andrew Fortin, CAI's vice president of government and public affairs. "This particular case was especially important because the association continued to neglect its responsibilities and, having delayed the judgment for years and ultimately losing the case, is now attempting to duck financial responsibility for the costs. That would be an injustice to the homeowner and set a bad precedent for community association law."

CAI is a national membership organization that represents homeowner and condominium associations, providing education and resources to the volunteer leaders and professionals involved in the governance and management of common-interest communities. CAI's 28,500 members include community association volunteer leaders (homeowners), professional association managers and management firms and other professionals who provide products and services to community associations.

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The CAI brief can be accessed in the Members Only section of the CAI website at [www.caionline.org/govt/news/](http://www.caionline.org/govt/news/). Nonmembers should contact CAI's Frank Rathbun at [frathbun@caionline.org](mailto:frathbun@caionline.org) or (703) 797-6261.

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