

Channels of Communication

Serving Ventura, Santa Barbara, San Luis Obispo and Kern Counties

FOURTH QUARTER 2017

The Official Publication of 
CHANNEL ISLANDS CHAPTER
community
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HAPPY NEW YEAR

IN THIS ISSUE...

**Celebrating 700 Chapter
Members Strong... and
Growing!**

**Disaster Preparedness:
Planning Ahead**

**When Could A Catastrophe
Be More Than A
Catastrophe?**

**2017-2018 Legislative
Update**

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Page 6



Page 10

Your Chapter

- 5 President's Message
- 20 CLAC Corner
- 23 New and Renewing Members
- 26 Chapter Sponsors

Special Features

- 6 Disaster Preparedness
- 10 Failure To Plan
- 14 Don't Get Burned When Making An Insurance Claim After A Fire
- 18 700 Members Strong

Chapter Happenings

- 22 Calendar of Events
- 22 Welcome New Members
- 22 Happy New Year from CAI-Channel Islands Chapter!

Resources

- 27 Advertising with the Chapter
- 29 Classified Directory/Advertisers



Page 14



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president's message



Gordon Miller
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Hello Fellow CAI Members:

In all the years I've served on CAI's Board of Directors, this past year has flown by at an unprecedented rate. I blinked and I'm looking at the 4th Quarter publication of Channels! What an amazing year it's been and what an amazing chapter Channel Islands is to serve. As the 2017 Board President, I am proud of our chapter and it's mindful growth and outstanding reputation. With more than a quarter century of experience in the Channel Islands Chapter, I've watched us blossom from meager means to one of CAI-National's fastest growing and most financially sound members. We've recently crossed the 700 member milestone, and as we continue to build momentum, I'm confident our chapter leadership will maintain our commitment to increase the value our members receive.

If you are an association board member reading this publication, I hope you are aware of what a wonderful opportunity you have to learn about the importance of your role as a community leader, through CAI. At both the National and Chapter level, there are many resources available to you to learn more about how to best serve your community. Our chapter is chock full of Community Association Industry experts who can help guide you through the sometimes murky waters of community stewardship.

If you are a community manager, your participation in CAI is an outstanding opportunity to learn about, keep up to speed with, and network within the Community Association Industry. Our purpose is to help you develop your knowledge, skills and experience and we can help to guide your though the process of earning your CMCA, AMS and PCAM designations. This quarter's issue is sure to provide several industry insights to hone your skills.

With the Thomas Fire hitting many homes within our chapter boundaries, our thoughts go out to the many affected. The theme of this chapter magazine was quickly adjusted to assist you to prepare for unforeseen natural disasters that can occur. We appreciate the many chapter members who stepped up to offer their expertise and we will plan to further address the topic of Disaster Preparedness in 2018.

Thank you all for your support in 2017. It's been my honor to serve our chapter. I look forward to returning to the rank of Chapter Board Member in 2018, and continuing to participate in our continued industry education, together.

Gordon Miller

Gordon Miller
CAI-Channel Islands Chapter President

Disaster Preparedness



*By Chelsi Rueter, CCAM, CMCA
Community Property Management*

California has seen its fair share of disasters this year, starting with torrential rains that caused landslides and deadly flooding, followed by record breaking heat waves in the summer and fall. October saw the most destructive fire in California history, killing 44 people and destroying more than 5,000 buildings throughout the wine country. Just when we thought we had seen enough, Southern California erupted into flames in early December, burning more than 500 structures and counting. Needless to say, it's been a year of extreme contrast and certainly a catalyst to create or rethink our disaster preparedness plans.

So what does this mean for community associations and board members in particular? Regardless of the type of

disaster, residents will likely turn to the community leaders to oversee and guide the recovery process. Many residents could be displaced, buildings and facilities may be severely damaged or destroyed, and reserve funds could be entirely depleted. As such, it is crucial that boards develop a comprehensive disaster plan and review it regularly to be sure it is up-to-date and addresses the immediate needs of the community.

An effective disaster preparedness plan should, at minimum, answer six basic questions. The answers to each will vary for each community as well as the different types of disasters that may occur.

The plan does not have to be especially broad or complex, but it should contain enough information so that board members can quickly understand their roles and responsibilities during a disaster. Since most community association board members are volunteer owners or residents, most probably do not have much experience in managing disaster responses or dealing with large-scale emergencies. These events could be life threatening, therefore it's crucial that board members rely on experts. Fee based companies and consultants are typically very good at developing and administering effective disaster training and exercises. It is also important that the plan be reviewed or even created with the help of an expert, such as a local police chief or fire captain.

Once a plan is finalized and adopted it should be distributed to the membership and reviewed regularly. I recommend providing the plan to new owners at the close of escrow and distributing a new copy to each owner at least annually. For larger communities that may be more difficult to evacuate or facilitate organization, conducting periodic emergency drills may be beneficial. At minimum, each new board member should be acutely aware of his or her role should a disaster occur and the entire board should conduct periodic training and execution drills.

“By failing to prepare, you are preparing to fail.”

One of the most important steps in disaster preparedness is taking measures to mitigate the impact a disaster may have. Being proactive can help communities reduce infrastructure damage and minimize recovery after a disaster. Effective mitigation activities include identifying hazards, assessing vulnerabilities, and reviewing insurance policies regularly to ensure adequate coverage.

Additionally, owners should be made aware of the insurance coverage the association does and does not have. Earthquake insurance, for example, may have a relatively high deductible that would require the board to special assess the members in the event of a large loss. It is important that owners be made aware of this possibility so they can prepare accordingly. In order for an emergency plan to be successful, the board of directors must have a clear understanding of their insurance coverage, property status and available funding.

There are many ways a disaster can destructively affect condominiums, planned developments, or any other type of community association. Without a formalized plan, panic may replace reason and responses will be chaotic and disorderly. A comprehensive disaster plan that is tailored to the needs of the community association will create some sense of order and peace during a time of crisis. Benjamin Franklin said it best – “By failing to prepare, you are preparing to fail.” [↑](#)

WHO will be impacted and who will respond?

This will outline the responsibilities for specific functions.

WHAT is the plan?

Quite simply, the plan must best serve the needs of the entire community.

WHERE do we go during and after a disaster?

If residents are displaced, a temporary shelter may be necessary. The shelter location should be established as well as a backup plan in case that location is not usable. This topic should also include the location of emergency supplies like water, flashlights, first aid kits, etc.

WHEN will the plan be necessary?

This should outline the events that would trigger the enactment of the emergency plan.

WHY is the plan being developed?

This could be similar to a company's mission statement. It should be fairly simple and include the primary objectives and desired outcomes.

HOW will board members communicate?

Remember that board members may also be displaced or need assistance. If board members cannot meet in a pre-determined place it's critical that an alternate system be created to establish protocol.

Chelsi Rueter is the Operations Manager & Senior Community Manager at Community Property Management. She has been with the company for over 10 years and strives to further her education, knowledge, and contribution to the industry. Chelsi is a Certified Community Manager through both CAI and CACM and is in the process of earning her Professional Community Association Manager (PCAM), the highest achievement for community managers through CAI. Chelsi has served on several committees for the CAI Channel Islands Chapter, presented at educational luncheons, and written for CACM and CAI's magazine publications.



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FAILURE TO PLAN

*By Timothy Cline, CIRMS
Cline Agency Insurance Brokers*

When Could A Catastrophe Be More Than A Catastrophe?

Whether it is a brush fire, earthquake, flooding, or a mudslide, every common interest development is vulnerable to natural disaster. Unfortunately, few associations develop a detailed game plan to respond to the countless issues associated with such disasters. No one likes to contemplate the worst, yet the failure to do so could prove truly catastrophic. This article will provide a cursory overview of the insurance issues. A far broader perspective could be gained by also discussing this issue with your Association's legal counsel and CPA.

It could be a day like any other day, but it's not. And depending on the type of event, the otherwise serene appearance of the day could change suddenly and without warning. Natural disasters may be "natural," but unfortunately, they are also "naturally" hard to predict. And even though your first instinct may be to purchase insurance (the desire to transfer an exposure to a carrier in exchange for a premium) there are circumstances where the exposure is so great, the coverage may not be available or, if it is, may not be affordable. For example, coverage for the peril of fire is nearly always available, and earthquake

and flood coverage can always be purchased, albeit at a price. Coverage against damage due to sink holes, earth movement, tsunamis, and mudslides may be more difficult or, in some cases, impossible to obtain.

When evaluating your Association's exposure to catastrophe losses, be sure to check with your insurance agent or broker. He or she will likely have access to brush, flood, and earthquake maps. Knowing the type of soils the project is built on, the susceptibility to liquefaction, the distance to known fault lines, and the history/behavior

of those fault lines can be helpful in determining the Association's exposure to earthquake events. The same is true for maps illustrating the designated flood areas (described as Special Flood Hazard Areas or SFHA by the folks at FEMA) or the distance to the designated brush areas.

Since the Covenants, Conditions and Restrictions (CC&Rs) place the repair responsibilities of the Common Area on the Board's shoulders, evaluating potential funding mechanisms for a post-disaster climate not only makes sense, it's imperative. What we've learned from the Oakland Fires (1991), Hurricane Andrews (1992), and the Northridge Earthquake (1994) is that the Federal Government is not going to bail you out. Yes, FEMA may offer small emergency grants to impacted homeowners, but when approached, FEMA will simply refer the association to the Small Business Administration (SBA). The SBA didn't hand money out. Instead, the SBA offered a very lengthy loan process which, if successfully navigated, offered damaged HOAs up to \$1.5 million amortized over 20 years. But remember this is not a handout, it's a loan, and the SBA looks at the monthly income stream (monthly homeowners dues) as something they can attach to assure the loan will be repaid.

The decision to purchase these important catastrophe coverages (when available) or to continue to self-insure is a difficult one. Many common interest development attorneys have opined that there are certain decisions which are far too important or too complex to delegate to the general membership. That is to say that some purchases, such as obtaining earthquake and flood coverage, for example, are too complex to sufficiently disclose all the details (including the apparent benefits) to the membership.

An underinformed general membership could reject coverage they might have otherwise realized they wanted had they fully understood the ramifications.

While the board can take input regarding the merits of purchasing such coverage, ultimately the decision rests with the Board. The Board may be required to seek approval of the general membership if the cost of the coverage exceeds the Civil Code guidelines: (1) if such coverage required an increase of more than 20% greater than the regular assessment for the preceding fiscal year; or (2) if the cost of the special assessment required a special assessment which would equate to more than 5% of the current fiscal year's budgeted gross expenses. (See California Civil Code §5605 – although the CC&Rs may have a more restrictive requirement which might prevail.)

Buying coverage is a good first step, but pre-disaster planning is extraordinarily important, and attention rightfully focuses on the CC&Rs and ByLaws and what authority the Board of Directors may or may not have. For example, who has the authority to submit a claim? Does your Board of Directors have the authority to meet with the adjuster and negotiate the insurance settlement on behalf of the Association? Once the Board receives the proceeds from the insurance

settlement, does the Board have the authority to obtain and evaluate bids for repair? Can they sign the contract? Can they accept the quality of the workmanship performed when the work is completed? How is the deductible going to be handled?

Insurance settlements on earthquake claims can be in the millions of dollars and whenever there's money involved, there is a heightened potential for crime. The Board must make certain they have enough crime/fidelity coverage to protect the funds while they are in the Association's care, custody, and control. How frustrating it would be to receive a multi-million dollar settlement only to have it stolen by an embezzler, or to have your banking credentials "borrowed" by someone outside the Association whose nefarious intent is to transfer your HOA's funds elsewhere.

Whether it's the loss itself or the aftermath the catastrophe created, careful planning and foresight can help the Board of Directors navigate the most treacherous claim-related challenges. Consulting with your insurance agent/broker about available coverages and consulting with your attorney and CPA about the pre and post-loss issues will help you address the days after the loss with confidence. [↑](#)



Timothy Cline, CIRMS, is considered one of the leading authorities on insurance for common interest developments. He is President of Cline Agency Insurance Brokers based in Los Angeles, California, where he and his staff specialize exclusively in coverage for common interest developments and commercial properties in California, Oregon, Washington, and Arizona. Tim is a former President of the Channel Islands Chapter of CAI.



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Don't Get Burned When Making An Insurance Claim After A Fire

By William Brockschmidt, Esq.
Roseman Law, APC



Insurance companies play an essential role in our society, and no doubt employ many good men and women who strive to deal honestly and fairly with their customers. But unfortunately, it is a fact that insurance claims are not always processed and paid in a fair and equitable manner. Above all else, those making insurance claims need to approach the claims process with an appropriate level of skepticism and vigilance, so as to ensure that they obtain all of the benefits to which they are entitled.

To begin with, the interests of insurance companies and their insureds are—on a very fundamental level—diametrically opposed. Whereas insureds wish to receive the most money possible as a result of the disaster that has befallen them, insurance companies wish to pay out the least amount of money on a claim. Also, while as discussed below insurance companies owe certain heightened duties to their insureds, these heightened duties do not necessarily ensure that claims are fairly and appropriately handled.

An insurance policy is, fundamentally, a contract between an insurance company and an insured whereby the insurance company promises, pursuant to the terms of a written agreement, to compensate the insured for losses incurred upon the happening of specified events. Of course, in reality, determining an insurer's actual obligations under an insurance contract is often neither a simple nor straightforward endeavor. Insurance policies are written in insurance company language, replete with insurance-company defined terms, definitions, and exclusions. Additionally, there are volumes of case law interpreting the meaning of certain words, provisions, and exclusions. Also, the reason that insurance coverage is a specialty among attorneys is because an average attorney—not versed in coverage law—is not pre-equipped to understand and navigate the terms, issues, and law applicable to insurance policies and their interpretation. From a layperson's perspective, insurance policies—as well as letters denying insurance claims, based upon the terms of an insurance policy—may as well be written in a foreign language.

California law has, on some level, recognized the unique and special nature of an insurer-insured relationship, and the manner in which insurance companies can abuse the dynamics inherent in such relationship, i.e., vulnerable

and injured insureds making claims, and receiving communications and denials, pursuant to and regarding insurance policies which, practically speaking, can be indecipherable to a layperson. California law imposes, in every insurance contract, a covenant of good faith and fair dealing which obligates insurers to deal fairly and in good faith with its insureds, and to fully investigate the grounds for any denial of an insurance claim. Insurance companies breaching such duties can be liable for tort damages, based upon their “bad faith” conduct.

However, and notwithstanding an insurance company's heightened duties, and potential liability for bad faith conduct, insurance companies have the right to deny claims that they in good faith believe are not covered by the applicable policy (and subject, of course, to their insured's right to challenge such denial). Of course, determining whether an insurance company is acting in bad faith—or in good faith, in erroneously denying a claim—is not always clear and is rarely, if ever, a determination that a layperson is qualified to make.

In sum, insurance companies—in addition to being in the business of paying insurance claims—are just as much in the business of denying insurance claims. If an insured's claim is denied, in whole or in part, such insured should not assume such denial to be a final and definitive statement on the matter. Rather, such insured should realize that such denial may have been made in bad faith, or have been made in good faith but was nonetheless wrong and is subject to challenge. Additionally, when making an insurance claim, insureds can and should leverage the heightened duties that insurers owe to ensure that their claims are promptly and fairly processed. In any case, and in order to ensure that their rights are protected, insureds should consult with a qualified attorney—and particularly if a claim is denied, in whole or in part, or is not being timely processed—in order to ensure that their rights are fully protected. ⬆



William Brockschmidt, Esq., is a senior lawyer with Roseman Law, APC, and specializes in representing HOAs and owners in insurance and bad faith claims.

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2017-2018 Legislative Update

By **James Perero, Esq.**, Myers, Widders, Gibson, Jones & Feingold, LLP

CAI was hard at work in 2017 influencing our national and state politicians to develop and pass good legislation. On the Federal side, the House of Representatives is considering the **Disaster Assistance Equity Act (H.R. 3238)**.

When disaster strikes—whether in the form of a hurricane, flood, or fire—debris accumulates in roadways, hindering recovery. The Federal Emergency Management Agency (FEMA) assists afflicted local governments by (among things) funding debris removal. However, federal law prohibits FEMA from funding debris removal for roads maintained by community associations. That means when disaster strikes your community, your tax dollars pay to clean neighboring public streets, but not the street you live on.

H.R. 3238 is a “fairness fix” that would authorize FEMA to fund debris clearance in your association. If you think this is a good idea, contact your federal representative and urge her to support the bill.

On the State side, CAI’s California Legislative Action Committee (CLAC) fought well, and made what could have been a terrible year a lot less so. Californians love innovation, and our state representatives are no exception. When it came time to adopt creative solutions to climate change and housing, Sacramento (sadly) was not particularly interested in the needs of community associations.

Additional laws were adopted regarding noncommercial solicitation and director liability.

On the climate change front, Governor Brown wants to reduce greenhouse gas emissions. When he sees legislation designed to expand the use of solar energy systems, his pen is ready. He signed **Assembly Bill 634 (Eggman)**, which prevents an association from prohibiting an owner’s use of a common area roof (or adjacent exclusive use garage or carport) of a multi-unit condominium building for a solar energy system. The new law eliminates the need for an owner to obtain 2/3 approval from members in the association before the owner can (effectively) convert common area to the owner’s exclusive use.

Although this law means associations have less control over common area, CLAC’s efforts ensured that the law specifically allows a community to implement reasonable restrictions on installation of solar energy systems. Permitted restrictions include requiring the owner to pay costs for maintenance, replacement or repair of roofing damaged by the system, and requiring installers to indemnify or reimburse the association for damage caused by installation, maintenance or use of the system.

Regarding housing, the Legislature passed a series of bills designed to address California’s affordable housing crisis. **Senate Bill 2 (Atkins)** is part of the funding mechanism. It imposes a \$75 fee on each recorded document in the state. That means that when an association records a lien against an owner’s separate interest for non-payment of assessments, the \$75 is tacked onto the delinquent owner’s debt. As a cost incurred by the association during collection efforts, the amount is recoverable from the owner. The irony is the State is taking \$75 from a homeowner whose debt likely arose out of the same affordability crisis the legislation seeks to address.

Senate Bill 407 (Wieckowski) protects the rights of community association residents to meet, canvass, and distribute materials within the association. Under the law, an association may not prohibit a member from peacefully assembling or meeting at a reasonable time or in a reasonable manner for purposes relating to community association living, association elections, legislation, election to public office, or the initiative,



James Perero is an attorney at the law firm Myers, Widders, Gibson, Jones & Feingold, LLP and has been practicing law for over 8 years. He represents community associations as general and litigation counsel and is an active member of CAI-Channel Islands Chapter and serves as the Chapter’s Delegate for CAI’s California Legislative Action Committee (CLAC).

referendum, or recall process. Associations may not require an owner who would use common area facilities for these purposes to pay a fee, make a deposit, obtain insurance, or pay the premium or deductible on an association's insurance policy. Bear in mind that an association may impose reasonable restrictions on these activities.

In the solid win category, **Assembly Bill 1412 (Choi)**—sponsored by CLAC—was signed into law. The law amends Civil Code section 4041, regarding the consequence of an offsite owner's failure to update the owner's mailing address for receiving association notices. If an owner fails to disclose an address, the manager may use the last known address of record. Even better, the new law amends Civil Code section 5800 by extending liability protections to a volunteer officer or director of a mixed-use community association, who is also a resident of the association. [↑](#)

Thank you . . .

to everyone who joined us for our November Chapter Luncheon "Annual Legislative Update" and to those who brought non-perishable food items as a donation to Food Share of Ventura County. Through your gracious donations, we were able to provide Food Share with 390 pounds of food which equates to approximately 325 meals! And because we reached our goal of collecting more than 300 food items, the following members each contributed \$300 to CLAC to help the chapter meet our annual fundraising goal!



CLAC Team

Pictured: 2018 Chapter CLAC Delegate James Perero Esq., CAI-CLAC Advocate Louie Brown Esq., 2017 Chapter Delegate/2018 At-Large Delegate Jeff Beaumont Esq. and 2017-2018 Chapter CLAC Delegate Steven Roseman Esq.



Thank you to the following members for their contribution to CAI-CLAC:



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Happy New Year from CAI-Channel Islands Chapter!



Pictured: CAI-Channel Islands Chapter's 2018 Board of Directors: (back row) Joe Smigiel, Gordon Miller, Tami Chavin, Ruth Campbell (front row) Steve Roseman Esq., Leah Ross (Executive Director), Phyllis Pazen, Martha Kellerhof, Colleen Scott, Tracy Neal Esq., Bob Scheaffer and Jose H. Glez

2018

Chapter Calendar of Events

- Jan 12** **Casino Night & Chapter Awards**, 5:00 pm, The Hyatt Westlake Plaza
- Jan 30** **Chapter Luncheon**, 11:30 am, Los Robles Greens, Thousand Oaks
Chapter Board Meeting, 10:15 am
- Jan 31-Feb 3** **Annual Community Association Law Seminar**, La Quinta
- Feb 8** **Central Coast Dinner Program**, 6 pm, Ventana Grill, Pismo Beach
- Feb 27** **Chapter Luncheon**, 11:30 am, Los Robles Greens, Thousand Oaks
Chapter Board Meeting, 10:15 am
- Mar 27** **Chapter Luncheon**, 11:30 am, Los Robles Greens, Thousand Oaks
Chapter Board Meeting, 10:15 am

Please Note: Event dates, times and locations are subject to change. Please check the chapter website: cai-channelislands.org for the most current information



On behalf of the Chapter's Board of Directors and Executive Director Leah Ross, we would like to thank you for your chapter membership! We are grateful for the support of our members and value your dedication and service to the Community Associations industry. Happy New Year and we look forward to continuing to work with you in 2018!

*If your company or association is doing something significant, we want to recognize you in our next chapter magazine!
Email photos and announcement to leah@cai-channelislands.org.*

Thank you

to the following members for renewing your membership with CAI!

Community Association Volunteer Leaders

John Homes, HarborWalk Homeowners Association • Ruben Jimenez, Ponderosa Temple
Linda Legman, Villaggio Mountain Meadow • Ray Paladino, Valle Del Sol
Carol Stamey, Carefree Living Association
Madeline Young-Ellis, Oaknoll Condominiums

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Matthew Bland, CMCA, AMS Realty, Inc. • Tami L. Chavin, CCAM, CMCA, AMS, PCAM, Community Property Management • Marianne Freeman, Ennisbrook Homeowners Association • Tamera Gresiak, Sherwood Valley Homeowners Association
Benito Meza, Association Services of Ventura • Carol Short, Surfside III Association
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Welcome

to our new members!

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Jan Allen, Summerset Village Homeowners Association
James Lingl, Loraine Luxury Townhomes Owners Association
Laura Passmore, Cottages on the Green
Nicole Villarreal, Terrace park Homeowners Association

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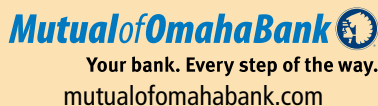
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To check availability, call the Chapter Office at 805-658-1438 or email leah@cai-channelislands.org.



CHAPTER LUNCHEON

The Costs of Owners "Aging in Place"

Tuesday, January 30, 2018
11:30 am
Los Robles Greens, Thousand Oaks

With an ever-aging baby boomer population, there is a growing need for community associations to recognize and prepare for difficult issues that may accompany aging residents in the community. Such issues as unit interior maintenance, and "reasonable modification" requests to unit interiors (hardwood flooring instead of carpet, or other modifications) or common areas (access ramps, handrails, door openers) require the association to move forward cautiously and responsibly.

Join Sandra L. Gottlieb, Esq., CCAL of SwedelsonGottlieb and Chad McCloskey of Association Reserves in an informative discussion on what issues might be soon affecting your association, and how to responsibly prepare for the issues and expenses related to more and more owners "Aging in Place".

Register online at www.cai-channelislands.org or call the Chapter Office at 805-658-1438.



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