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October 2013

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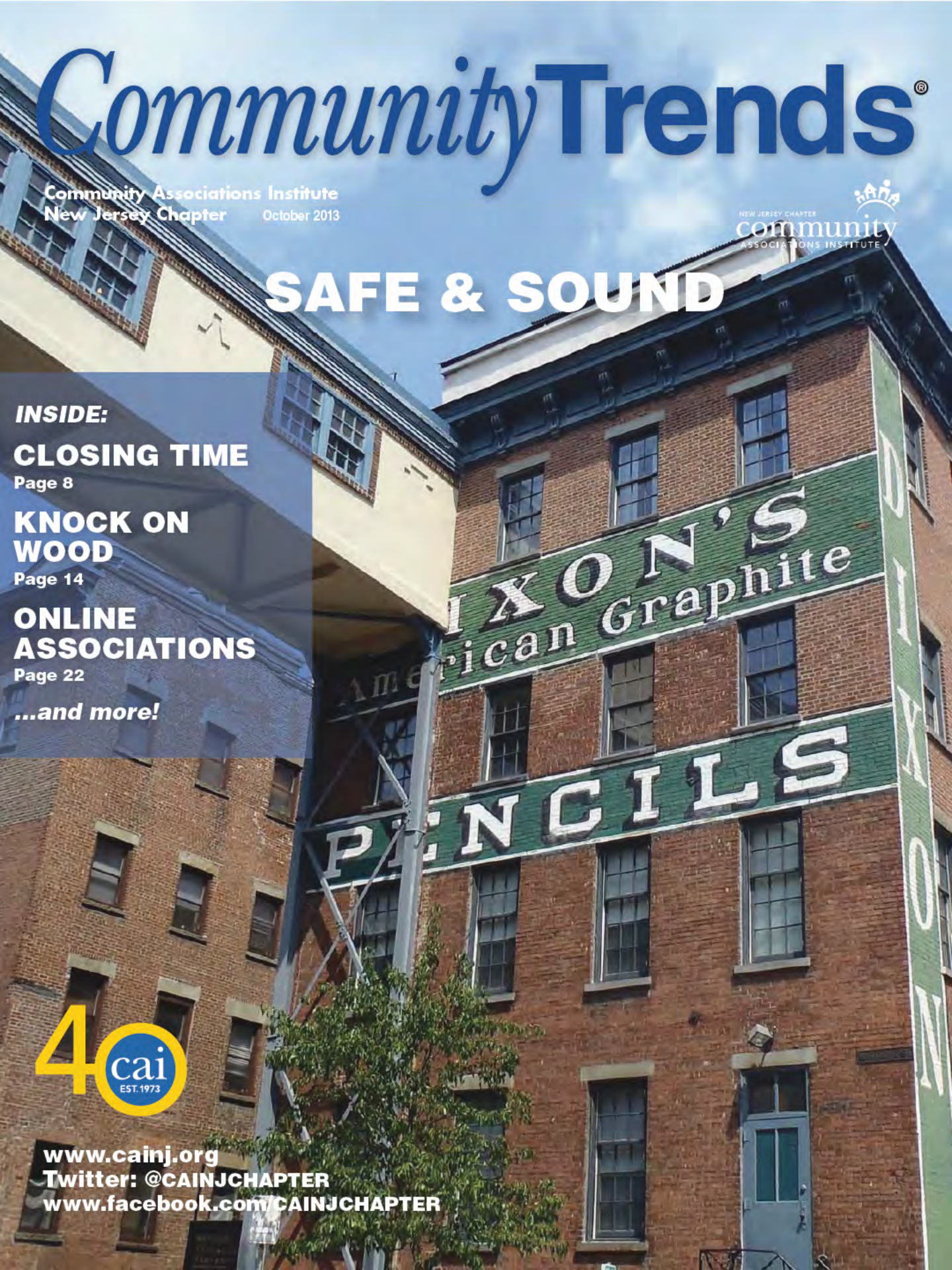

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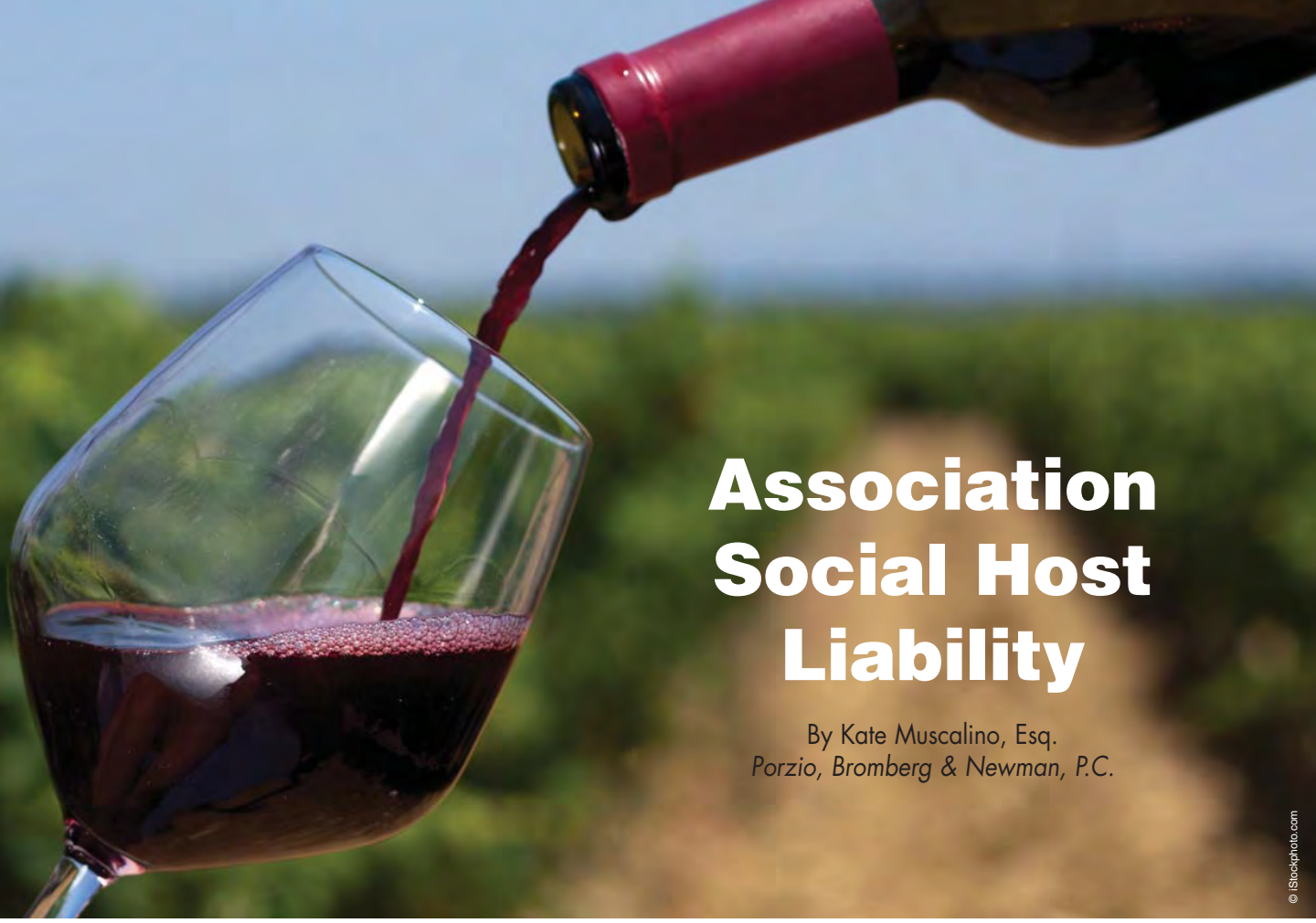

Association Social Host Liability

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Associations often seek to build camaraderie and foster unit owner engagement within their communities through association-sponsored social events held at the communities' clubhouse or other common areas. It is crucial for associations to understand New Jersey's social host laws and their applicability to parties on association property.

Under New Jersey's social host liability statute, an association would be considered a "social host" if it, "by express or implied invitation, invites another person onto [its] unlicensed premises for purposes of hospitality … [and] legally provides alcoholic beverages to another person who has attained the legal age to purchase and consume alcoholic beverages."[1] As a social host, an association would incur liability if it "willfully and knowingly provide[s]" alcohol to a visibly intoxicated guest or member, creating an "unreasonable risk of a foreseeable harm," and the intoxicated guest causes an injury by negligently operating a motor vehicle.[2] In other words, an association can incur liability when it provides alcohol to a visibly intoxicated adult and that adult causes an accident. Social host liability does not apply to under-aged intoxicated guests; instead, an association's liability for intoxicated minors is governed by common law negligence standards.

The New Jersey courts recently considered how social host liability applies within a community. On May 13, 2013, the Appellate Division overturned a $7.4 million judgment in *Lau v. Seabring Associates,* in favor of a pedestrian who had been hit by an under-aged drunk driver leaving a pool party at an apartment complex.[3] There, the court found that the apartment complex was not a social host and was not liable for the victim's injuries because the pool party had not been sponsored by the apartment complex. Instead, a front desk concierge had permitted the party to occur, in spite of the complex's pool hours and prohibition of alcohol at the pool.

At the trial level, a jury had awarded the pedestrian $7.4 million in damages, allocating 55 percent of the liability to the owner of the apartment complex, 25 percent of the liability to the driver, and 20 percent of the liability to the concierge. The driver entered into a $15,000.00 settlement with the victim, while the concierge defaulted. The apartment complex owner therefore became liable for the balance of the judgment under New Jersey's joint and several liability statutes. Joint and several liability means that a single defendant is responsible for paying a plaintiff the entirety of the judgment, and that defendant may then pursue reimbursement from its co-defendants.

"The New Jersey courts recently considered how social host liability applies within a community."

However, in a decision with ramifications relevant to common interest communities, as well as apartment complexes, the New Jersey Appellate Division overturned the judgment, finding that the trial court had improperly instructed the jury to consider whether the apartment complex was liable as a social host

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and whether it was liable for the actions of the concierge. The Appellate Division found that the complex did not have any social host liability because the complex was not acting as a social host for the party. The pool party had not been sponsored or condoned by the complex's owner, and no evidence had been introduced to suggest that the complex's owner had supplied the alcohol for the party. Instead, the complex simply acted as an employer of an employee (the concierge) who had failed to enforce the complex's pool rules. The Appellate Division also noted that because the driver was under age, the complex would have been liable under traditional negligence principles under common law, rather than social host liability, had it been a sponsor of the party.

The Appellate Division also found that the complex could not be liable for its employee's failure to enforce the rules under a "respondeat superior" theory of liability. Respondeat superior is a legal doctrine that translates to "let the master answer" in Latin, and means that an employer is responsible for the actions of its employees performed within the course of their employment. The Appellate Division held that respondeat superior did not apply because the concierge had acted outside the scope of his employment by ignoring his employer's rules regarding use of the pool. The Court noted that his actions "directly undermined the security of the building that [the concierge] was hired to provide." Because the employee's action was not within the scope of his employment, and not intended to serve his employer, the Court found that respondeat superior did not apply and that the apartment complex could not be vicariously liable for the concierge's unauthorized actions.

The New Jersey courts have also held that a host cannot protect itself from liability by permitting its guests to serve themselves or to bring their own alcohol to the premises. In *Dowar v. Gamba,* a guest brought his own alcohol to a party before driving drunk and injuring two of his passengers in an accident.[4] In holding the party host liable for the injuries to the passengers, even though the guest had brought his own alcohol to the party, the court found that the legislature did not intend for a social host to escape social liability simply by "placing the booze on the table and walking away."[5] Even this indirect provision of alcohol was sufficient to create social host liability.

There are many important lessons for community associations, including how an association should host an event, how it should train its management, and how it should permit its common elements to be used. Most importantly, associations must understand that they have social host liability for events sponsored by the association on the common property. This means that if the association provides alcohol to visibly intoxicated adults, or permits its adult unit

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owners or guests to bring alcohol onto the common property, it is liable for the actions of those adults, even once they leave the common property. For example, if a unit owner attends an association function, consumes alcohol provided by the association, becomes visibly intoxicated, and later drives his car and gets in an accident, the association could be liable as a social host for the damages caused by the unit owner's accident.

To avoid this liability, associations should adopt procedures to ensure that alcohol is only consumed by adults who are not visibly intoxicated at association events, including training for management, employees, board members or volunteer board members. Alcohol should not be left out for unit owners to serve themselves; if a visibly intoxicated adult over-serves himself with association-provided alcohol, the association could still be liable. Additionally, if an association has a "BYOB" policy, permitting unit owners to bring their own alcohol to an association-sponsored event, the association should designate a person in attendance to ensure that visibly intoxicated persons do not continue to drink. By providing board members, managers and employees with training, the association may protect itself from liability in the event a server, whether it be an employee, manager or board member, fails to comply with association policy or if a unit owner over serves himself.

The *Lau* decision suggests that an association will not incur liability for an event on the common elements that is not sponsored by the association, so long as the association's rules regarding such events are clear that the association does not provide alcohol for such events and does not condone service of alcoholic drinks to intoxicated drinks. The association should carefully craft its Clubhouse Use Agreement or agreements for private use of other common property by unit owners accordingly.

Associations must be conscientious when providing alcohol at association-sponsored events, train their personnel, and prevent visibly intoxicated guests from continuing to drink to best avoid social host liability. ■

(Endnotes)

1 N.J.S.A. 2A:15-5.5.

2 N.J.S.A. 2A:15-5.6.

3 *Lau v. Seabring Associates*, A-3864-10 (App. Div. May 13, 2013).

4 276 N.J. Super. 319 (App. Div. 1994).

5 Id. at 327.