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BOMI Institute ShortCourse™

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Moderated by Gay Gueringer, Attorney at Law

More than ever before, property professionals are under greater scrutiny from owners, tenants, and the media — which means you'll need the skills and credentials to show you're “on the level”. Ethics is Good Business® helps you understand the impact that ethical behavior can have on your professional performance and your property's bottom line. Through video presentations of real-life scenarios and case studies, you will identify and resolve ethical dilemmas that can occur on the job.

Key Concepts & Skills:

- An awareness of how ethics influences your business success
- The ability to better identify potential ethical issues, thereby avoiding them
- Guidelines to use when identifying various value systems, and when articulating your own
- Skills in recognizing the progression of events that can lead to unethical misbehavior

The course will be held Thursday, February 22 at the CPA Foundation Classroom, located in Alamo Towers West, Suite 420. Cost is \$95 for BOMA members and \$125 for non-members. Registration must be received in the BOMA office by Tuesday, February 20. For more information, please contact Lynn Forester at (830) 981-5223.

Would You Like to Win a TOBY?

Our local competition for The Office Buildings of the Year is underway. Entries are due in the SABOMA office on March 1, 2001 so call us soon for your standardized entry binder. Rules and guidelines for the competition are available at www.boma.org, or you can call Lynn Forester at (830) 981-5188 for a copy. Local winners advance to the regional competition, whose winners then compete at the international level. Have you always said you'd like to enter your building ... someday? It's time to “just do it!”

Read comments from past TOBY-winners on page 3

Lifetime Learning

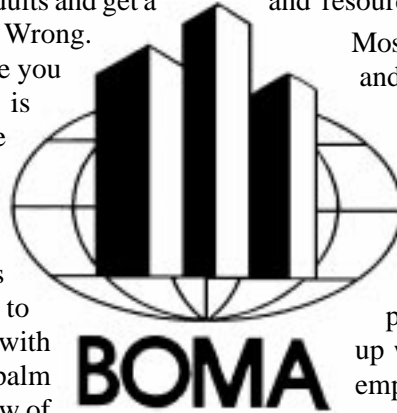
Examinations, tuition, continuing education, classes begin at...classroom hours are...How long will this take? Is this optional? Education. The very word can still make me cringe. Fact is, in the early years of our lives, it seemed our whole world revolved around it. Then we become adults and get a job. Yippee! We are finally through, right? Wrong. Unless of course you are satisfied with where you are and don't mind regressing. I believe it is impossible to stay still in your career. You are either moving forward or backwards. Have you ever wondered why a person's earning power peaks and then begins to decline later in life? I am convinced partial blame lies squarely on our complacency as it pertains to education and willingness to move forward with our industry and even technology (e-mail, palm pilots, etc.). Rest assured there is a steady flow of young, aggressive, highly educated people entering the job market and some of them want your job.

So how do you thwart the slide and extend your useful years? Simple. Educate yourself. Go get the designation you have always wanted. I will be the first to admit that I have dreaded signing up for and taking each of the four

CCIM classes I have completed. However, I ended up thoroughly enjoying most of the classes, actually learned something pertinent to my career and made new friends along the way. I concluded it was a good use of my time and resources.

Most employers recognize the benefit of education and will at least partially pay for the costs. If not, contact your very own San Antonio BOMA office. We have set aside funds specifically for scholarship use for our members on an as-needed basis. There are a wide variety of courses and programs available designed to educate and promote learning. As professionals, it is incumbent upon us to stay up with the times. You owe it to yourself, your employer and your clients. The year is still very young. Set yourself apart. Set a goal for yourself and go do it. A designation such as CPM, CCIM, RPA, etc., brings credibility, value, prestige and in some instances, more income to you. Do it now before you say you should have.

David Held,
President



Whoops!

The anticipated sale of Energy Plaza did not happen. Valerie Kelley of Grubb & Ellis remains as the property manager. Dave Nielson of Trammell Crow is now the property manager for CityView. We apologize for any confusion caused by our premature announcement in last month's newsletter.



RPA/FMA Course

Design, Operations, and Maintenance of Building Systems I

Instructor: Mel Trachta, CPM, RPA

Meets at GPM Life Tower on Thursday evenings from 6-8 p.m., beginning February 15.

Member course fee \$475; scholarships available.

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Would You Like to Win a TOBY?

continued from page 1

John Anthis, RPA, CPM

CityView won 1992 Local and Regional Competition (100,000 to 500,000 SF Category)

Because I believed we had one of the best properties and staff in San Antonio, I felt CityView was truly worthy to be considered for the award. We entered during one of the first years that San Antonio BOMA had resumed the competition locally. I was anxious to see some San Antonio properties competing at the regional and national level and entered CityView as a way to encourage other managers to enter their projects as well. Putting the entry together is not as big a task as it may seem before you begin. Most of the information you need, such as statistical data, is already available in marketing brochures and internal reports. You may decide you want some new views of the building for photograph submissions, or shots of state-of-the-art tenant spaces. When we won at the regional level after competing with buildings from several states, we really felt like the best of the best. The award is very useful in marketing the property; something owners understand is tenant retention and increasing the market value of a property. Being named The Office Building of the Year adds real value, and the tenants feel good about being in an award-winning building. Receiving this recognition reflects well on the manager, the staff, your contractors and the tenants; it shows you are on a winning team.

Marcy Barber, RPA

One Countryside Place won 1996 Local Competition (100,000 to 249,999 SF Category)

I was thrilled to win The Office Building of the Year award because I viewed it as a prestigious milestone for my building, its owners and the management company. The

greatest benefit of preparing the entry is that it provides a great analysis of the building, flaws and all. Putting everything together was a big challenge, because I wanted to include a lot of detail on our activities and operations. We also wanted to make our entry stand out from other entries in our category, so we looked for ways to be creative in our presentation of the required information. The walk-through part of the judging is very detailed. The committee members went all over the building, including parking lots, mechanical rooms, and the roof. To prepare, we spruced up the building, made some minor repairs such as painting, and made sure everything was in top condition. Winning a TOBY award makes a statement about the quality of the property that the owners appreciate and it is a great leasing tool.

Susan Sweet, CPM

Stone Oak Medical Office Building won 1997 Local Competition (Medical Office Building Category)

Entering the TOBY competition is very beneficial because it makes you look at your building with a new perspective. The standard entry binder is helpful in organizing your information, and I relied heavily on the checklist provided by BOMA International. In anticipation of entering the competition, I collected data in advance, keeping photos and files on events. Putting the entry together provided me with an opportunity to rework and update tenant manuals and put some final touches on my maintenance rooms. We were very honored to win, and the tenants, owners, and our affiliated hospital system were proud of this achievement. While it is exciting to be recognized as a TOBY-winning office building, even if you don't win it is very worthwhile to enter. It really makes you get your building in shape, and helps you focus on all of the roles of a building manager.

January Luncheon Highlights



Left: Dick Zucker accepts the President's Award on behalf of Beldon Roofing



Right: David Held gives Susan Sweet the past president's plaque

Whatsit?



Do you know what this object is? The first person to call the BOMA office at (830) 981-5223 with a correct guess will win a free BOMA luncheon!



Believe it or not, no one identified Dick Zucker as the subject of last month's whosit photo. Good luck to all on this month's contest!

BOMA, What Are You Doing About Forced Access?

By Don Dowell, President - Texas Building Owners and Managers Association

Forced access for telecommunications companies in office buildings—that’s the subject of a lot of questions being directed to Texas BOMA in recent months. The Texas Public Utility Commission (PUC) did not hear what we were telling them in the various hearings and interviews they conducted with our members. We diligently tried, without success, to explain to them that our tenants are our clients/customers and because we operate in such a competitive environment, most landlords do everything they can to cater to our tenants during their initial lease and hopefully, their future renewals. Giving access to the tenant’s desired telecom provider was one of the ways we try to accommodate them. Now office building owners are wondering what is happening on the recently-adopted PUC rules. These rules now prevent owners from having total control and discretion to say “no” to telecom companies and which prevent the owner from negotiating the best deal he can get when the telecom companies want into his building.

In *answering* those questions, I don’t profess to be the expert. So instead, I’ll *ask* the questions myself and share with you the answers given to me by Texas BOMA legal counsel. The answers affect the owner of any privately owned building, regardless of whether it is an office building, apartment house, condominium, industrial complex, or retail center. Here are the Q’s and A’s:

What do the forced access statute and PUC rules say...in a nutshell?

The statute gives all telecom companies a right of access into all privately-owned buildings — over the objection of the owners — to install their equipment and lines at rates and on terms no less favorable than any other telecom company which is already in the building. The statute has limited protections for the owner on the subjects of security, limitations of space, installation safety, etc.

The PUC rules try to tone down the harshness of the statute by requiring the parties to first negotiate; but if that is unsuccessful, the PUC can order the building owner to grant access to the telecom company for installing their equipment and lines in the building, assuming there is space available.

Is this unfair or bad for the building owner?

Yes. Here are some of the reasons:

1. The right to occupy and use property is a property right, regardless of whether you call it a license, an easement, or telecommunications access right. Whenever the state uses its power to mandate the taking of property without compensation or with inadequate compensation, it’s unfair.

2. The economic health and fate of the building can be drastically affected by the reputation, capability, integrity, marketing ability, technical expertise, performance, reliability, service, and lasting power of the telecom company that is being forced on the owner. Some people have even described this relationship as a “forced partnership”— which has slim hopes for success in the long run.

3. When available space is used up by the early-arriving telecoms, the building owner and his tenants can be deprived of the owner’s ability to do what is best for the majority of the tenants in the building.

4. A telecom company that forces its way in may later go out of business (as some of the really big ones are on the verge of doing right now), leaving the building owner with removal costs of equipment and lines and a limited ability to service his tenants until that removal is accomplished.

5. What’s really going on here is that a handful of early-arriving telecom companies have been trying to use the statute...and now the PUC rules...to be one of the few telecoms who get into a building — and thereby preempt the rest of the competition because of space limitations. To that extent, the statute really hurts competition in the long run and can prevent, as a practical matter, tenants and buildings owners from later on doing business with late-arriving telecom companies that offer much better services, at cheaper rates for the tenants, and better terms for the building owner.

Are the statute and PUC rules constitutional? If not, why not?

The statute is unconstitutional for a number of reasons:

1. The U.S. Supreme Court has already held in the *Loretto* case that legislatures and state agencies cannot mandate that TV cable companies can have access into buildings with compensation to the property owner being set by a state agency. The Court held that such arbitrary action is a violation of U.S. Constitutional protection against a taking of property without due process. The New York statute in that case is quite analogous to the Texas telecommunications forced access statute. We believe the *Loretto* case is controlling.

2. The Texas Constitution and condemnation statutes guarantee that property owners will be compensated before the state takes possession of a citizen’s property—yet the PUC rules permit payment afterward, i.e., occupation first and payment second.

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BOMA, What Are You Doing About Forced Access?

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3. The Texas Constitution guarantees that compensation in any taking must ultimately be set by a jury (unlike the PUC rule) and not by a state administrative agency.

4. The Texas Constitution and statutes prohibit rent control — and the statute and PUC rules blatantly attempt to control rents.

These are just some of our some of our legal arguments.

What should building owners do and say?

When the telecom companies try to force their way into your building by quoting the statute and PUC rules, you can simply say:

“Of course, I always want to do what I can and should do to accommodate my tenants. But if you’re talking about forced access, no thanks. The statute and rules are an unconstitutional taking without due process and I’m not going to play that game. Now...let’s sit down and see if we can reach a mutually agreeable license agreement.”

If the past five years are an indication of the future, the odds are 999+ out of a 1000 that the telecom company will then say “Okay. Time out, let’s negotiate.”

Is Texas BOMA willing to fight?

Yes. Ever since the statute was first passed in 1995, Texas BOMA has taken the position that the statute and any rule promulgated under it is unconstitutional. Texas BOMA has stated publicly on many occasions that it is ready, willing, and able to have a court test case on the constitutionality issue (1) anytime one of our owners is sued by any telecom company trying to force their way into a building by using the statute or (2) anytime the PUC files an action against a building owner on these grounds. So far, no telecom company has been willing to precipitate any court action or meaningful PUC action against any building owner that we are aware of. We have again spread the word to all Texas BOMA members to contact us if any administrative action or court action is ever taken against any member in an attempt to enforce the statute or the rule.

What has Texas BOMA done to be prepared?

A very sizable Texas BOMA war chest has been raised. One of the largest and best law firms in Texas has been retained by Texas BOMA for several months now to handle the litigation. A comprehensive brief on all issues has been prepared. Pleadings are waiting in the wings to be filed as a declaratory judgment suit as promised by Texas BOMA legal counsel in the PUC hearings on the forced access rules. It is anticipated that other Texas real estate associations will join in any test case. The members of the coalition of real estate groups (the “Real Access Alliance”) who are fighting similar constitutionality issues before the

FCC in Washington, D.C. include: the Building Owners and Managers Association International, National Apartment Association, Institute of Real Estate Management, International Council of Shopping Centers, National Association of Real Estate Investment Trusts, National Association of Home Builders, National Association of Office and Industrial Properties, Manufactured Housing Institute, National Association of Realtors, National Multi Housing Council, and National Realty Committee.

Is BOMA International in the fray?

Yes. BOMA International funds have been earmarked to assist any test case in Texas. BOMA International personnel have been on top of everything happening in Texas from the very beginning and they have shared with us their wealth of legal research and strategy.

Is there a test case on constitutionality in the courts right now?

Yes. The Massachusetts Department of Telecommunications and Energy recently adopted forced access rules. Shortly thereafter, Massachusetts BOMA members and BOMA International joined forces and filed a lawsuit challenging the constitutionality of the rules. The suit is Greater Boston Real Estate Board, et al. vs. Massachusetts Department of Telecommunications and Energy, in the Superior Court of Massachusetts. Texas BOMA is tracking every action in the Massachusetts case, and the Massachusetts lawyers are in communication with our Texas lawyers on the similar issues in both cases.

How will that case affect Texas? And the rest of the nation?

Either the Massachusetts or the Texas courts will probably be the first courts in the nation to decide the constitutionality of the forced access issue. Court decisions in those two states will undoubtedly lay a precedent for what other legislatures and courts do in the other 48 states. The importance of the outcome in Texas and Massachusetts cannot be understated. Sacred property rights, economic value of our properties, and in the long run billions of dollars, are on the line for all building owners in the United States.

Mr. Dowell is the Vice President of Leasing for Harwood International. He has been involved in most aspects of the commercial office real estate industry for almost 20 years. Dowell is the current President of Texas Building Owners and Managers Association (BOMA). BOMA is the oldest and largest commercial real estate organization in the world.

Liability for Window Washing Injuries

By John Esley, JOBS Building Services, Inc.

LIABILITY, one word that all of us in business understand. In today's society we must protect ourselves the best we know how. I have taken excerpts from a recent letter, written by attorney Michael Abelson of Washington, D.C., given out at a seminar during the International Window Cleaning Association convention. His letter speaks to owners of window cleaning companies as well as owners/managers of commercial office buildings. This is important, so please read on. If you would like a copy of the complete letter, please contact me and one will be sent to you.

Below are quotes from direct from Mr. Abelson's letter:

Case One: Mr. Carl McNeal suffered the amputation of two legs and is paralyzed from the chest down after falling twelve stories...He was not afforded the opportunity to safely board the scaffold because the building owner and management had removed the outriggers originally designed by the architect, leaving it up to the window washers and the contractor to figure out how to raise the scaffold to roof level and tie back safety lines. The jury returned a verdict in the amount of \$4.5 million against the manufacturer of the wire rope clips...owner and management wisely settled prior to trial.

Case Two: Mr. Lewis fell six stories backwards out of a window...The evidence showed that the building owner failed to provide the window washer with safe access to the window, leaving it up to Lewis and the contractor to try to figure out how to wash the outside part of the window...The jury returned a \$6.5 million verdict against the building owner.

Case Three: Mr. Gambrell suffered disabling injuries when he fell nine stories from the roof...Although the roof of the building was originally designed for a two point suspended scaffold system, owner/management decided to cut cost by having the windows washed via a descent control system. Gambrell and the contractor were left to figure out how to tie off and descend from the building. The anchors provided as a tie off (originally designed for two point suspended scaffold) afforded Gambrell no opportunity to test his load before it was too late, i.e., after he was over the side of the building. The case was settled for a confidential (but substantial) amount during jury deliberations.

In all three of these cases, the building owner and/or management failed to provide a safe place to work for the window washers. In short, many building owners and management seem to be looking for the cheapest bid, disregarding the safety of the worker who is not provided safe access from the roof. Building owners may think that they are insulated from liability simply by hiring an independent contractor to do the work, but they are badly mistaken. The law states that where the building owner and management maintain custody and control of the roof, it is incumbent upon them to provide special precautions for the benefit of the window washers who ultimately place their lives at risk. Simply looking for the cheapest bid without due regard to safety is penny wise and pound foolish. If the permanent installation (anchor) is not being used as intended (as part of a powered platform system) it is to be taken out of service by the building owner.

News Roundup —

Transwestern Commercial Services has taken over the management of Corporate Square & Cypress Tower. Marcy Barber and Kelly DeFonte remain the respective building managers.

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People Tracks —

- **Tom Sheehan** is now the BOMA representative for Deloitte & Touche.
- **Paul Tedford** is the new BOMA representative for Koger Equity.
- **James Gregory** is now the BOMA representative for Gerloff Company.
- **Kendal Langenberg** is now the BOMA representative for Voss Lighting.
- **Jose Ramos** is now the BOMA representative for Grounds Control.
- **Al Rivera** is now the BOMA representative for Time Warner Telecom.
- **ReDonna Mendez** is now the BOMA representative for DuPont Flooring.

SABOMA Manager of the Year To Be Named

Our Colonel Richard C. Singer Manager of the Year Award is a special award presented to a truly outstanding property management professional. The purpose of this award is to recognize an individual who best exemplifies a truly professional building manager, and to build and maintain professional credibility within the community. The recipient serves as a role model to establish standards by which we all measure our own accomplishments.

The award's namesake, Col. Dick Singer, was the USAA Building Manager from 1954 to 1969. He served as president of San Antonio BOMA in 1961-62 and was always a close friend and supporter of BOMA up until his death in 1993.

The Singer Award is presented to a BOMA member who has:

- Demonstrated professional excellence and leadership skills
- Demonstrated a desire to better themselves through advanced education
- Participated in association activities, and
- Played an active role in local community programs

Potential recipients are nominated by our membership and then undergo an evaluation by the Awards Committee headed this year by Tomi Sue Beecham.

We have three outstanding nominees this year and look forward to naming one of them our newest Manager of the Year at the membership luncheon on February 15th. The nominees are:



*Ginny Hayward
of Baptist Health System*

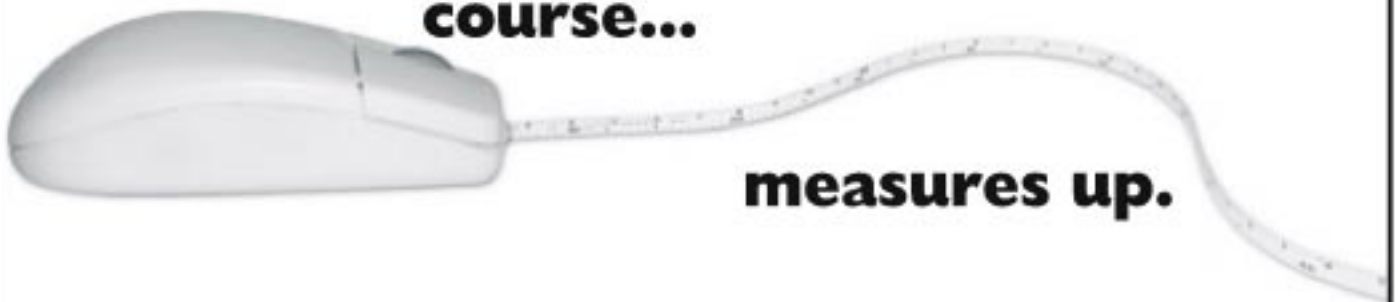


*Valerie Pons Kelley
of Grubb & Ellis Management*



Eileen Kondoff, CPM of Cross & Company

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BOMA OPEN	Richey Houdek & Susan Shepard
Community Service	Kelly DeFonte & Rebecca Camacho
Education	Billy Pitts
Finance	Brenda Younts
Government Affairs	Tomi Sue Beecham
Medical Office Building Forum	Cindi Furrow
Membership	Susan Shepard & Sandy Donovan
Newsletter	Greg Lillibridge & Pam Brant
Program	Eileen Kondoff
Public Relations	Robert Steele
Social	Sandra Harms
TOBY	Kim Speer
Trade Show	Marcy Barber
2002 Regional Conference	Mel Trachta & Kim Speer

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Mark Your Calendar —

February

- 15** RPA Course, "Design, Operation & Maintenance of Building Systems I"
Instructor: Mel Trachta, CPM, RPA
- 15** Membership Luncheon,
Oak Hills Country Club, 11:45 a.m.
- 22** BOMI Ethics Course, 8:00 a.m. - 12:00 p.m.,
CPA Education Foundation classroom
- 23** Committee Thank-You Party,
Far West Rodeo
- 27** Board of Directors Meeting, 12:00 p.m.
GPM Tower Conference Room

March

- 1** Deadline for entering local TOBY competition
- 15** Deadline for returning Experience Exchange
Report Surveys
- 15** Membership Luncheon,
Oak Hills Country Club, 11:45 a.m.
- 27** Board of Directors Meeting, 12:00 p.m.
GPM Tower Conference Room

February Luncheon

Please join us Thursday, February 15, 2001 when we present the Colonel Richard C. Singer Manager of the Year Award. We will also announce the recipient of the Achievement Award, given to a member who goes the extra mile in service to BOMA. See you there!