



# BEVEN & BROCK

## NEWS & VIEWS

for Homeowner Associations

October 2019

### New Resource Available For HOA Boards!

Beven & Brock is pleased to announce the availability of a new resource for Homeowner Association Boards to find information on topics of interest as needed on demand. Over 135 articles have been taken from prior newsletters and gathered in one place, located at <http://www.bevenandbrock.com/topical-article-library/>. The topics are organized into categories, such as Legal, Meetings, Board, Reserves, Insurance, Community, Elections, Maintenance, Management and other subjects.

This area of the website requires a simple one-time registration, and once that is completed, you can freely access a number of articles on a variety of topics that have appeared in *HOA News and Views* over the past eight years. This resource will help HOA Board members to become educated in an easy and accessible way. Our goal is to help boards make well-informed decisions in a variety of challenges that they may encounter.



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### TOPICS INCLUDE:

- Five elements of successful Boards
- Why teamwork matters for association Boards
- Why Boards collapse
- Why Group-Think holds Boards back
- Mastering conflict
- Communications strategies for dealing with difficult people
- Characteristics of a successful Board member
- Steps to effective decision making



### FEATURED SPEAKER Dr. Lori Baker-Schena, MBA, EdD

Dr. Lori Baker-Schena is a leadership consultant and highly entertaining professional speaker who works with individuals and businesses, including community association management companies, to achieve high levels of excellence, productivity and profitability. Dr. Baker-Schena brings to her clients 35 years as a healthcare public relations and marketing consultant, and 25 years as a tenured university professor teaching public relations and journalism.

Dr. Baker-Schena holds a bachelor's degree in Journalism and an MBA from California State University, Northridge, and a doctorate in Organization Leadership from the University of LaVerne.

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# Prepare For Rainy Weather Now!

By Dave Brock, PCAM



The winter of 2018-2019 was an exceptionally wet one for Southern California. In the last winter, Los Angeles is reported to have received over 27 inches of rain. In one day in early February, northern Los Angeles county received five inches alone. The amount of rainfall that is received is largely unpredictable. It seems that the experts can't predict, with accuracy, before the season just how much rain we will receive.

By this point in the year, the NOAA typically makes forecasts that are meant to inform us as to what the approaching winter might have in store. However, this year it looks as though NOAA is at a loss as to how much precipitation will fall over most of the United States over the 2019/20 winter.

Given the uncertainty of expected rainfalls, the only reasonable choice is to always prepare for the worst. Preparation is much better than failing to be ready and October is the best time to begin the process of preparation.

Don't wait until the rain starts to prepare. [Begin your preparation in October.](#)

What does preparation involve? The answer depends on your property and how it is built -- from the roofing system to the subterranean area below the building. Let's begin with the roof and work our way down.

**1. Roof maintenance** - Every HOA is strongly advised to conduct an annual inspection of the roof system. This inspection is intended to examine potential areas where water may enter the building. Roof systems include not just the roof itself, but also the vent pipes or similar penetrations that exist on every roof. The seal around the roof penetrations becomes deteriorated with the effects of the sun over the summer months and with the movement of the buildings (like in earthquakes). These areas need to

be treated with plastic roof cement.

The roofing materials must also be inspected to make sure there are no deteriorated areas that need repair or areas that have been damaged due to weather or installation of new equipment (like a/c units and satellite dishes). Most manufacturers will require roofs to be inspected at least once a year as part of the warranty that they issue on new roof installations. There are also components on the roof like metals and flashings that must be inspected to ensure they are still sealed.

Performing preventative maintenance on roofs and its components will ensure the roofs perform well. It prevents premature deterioration, which in the end will save money by not having to replace the roof as often. Then there are also the additional and expensive costs and inconvenience that roof leaks can cause.

## **2. Rain gutters and roof drains**

- Most every roof has rain gutters and drains that become clogged. Don't neglect to have them cleared every fall. Also, it is important to make sure the seams in gutters are sealed and that they are not loose. Gutters that are not functioning properly may cause water to go back into the roof, damaging the underlayment and eventually causing leaking inside the units.

## **3. Balconies and decks**

- Surface cracks in balconies and upper floor walkways can allow water into the building which will eventually cause problems. In addition, balconies that are sloped incorrectly (i.e. toward the living units) can cause water to leak into units.

## **4. Patios and planters**

- Many properties have planters on the patio surfaces that can leak if not properly waterproofed. When the planters are constructed adjacent to living units, or over subterranean parking areas inevitably there will be water intrusion in the adjacent units or the garage area below. Leaky planters or ground level decks are not a simple repair. In most cases, destructive testing will

need to occur to perform a proper repair, which entails removal of the plants and soil in the planter and the application of waterproofing the interior planter areas and installing drainage. Some associations choose to eliminate planters completely, and replace them with more deck space, or planters that are designed for drought-tolerant landscaping.

Patio decks that are immediately adjacent to the building need to be examined and caulked to prevent water intrusions.

## **5. Subterranean**

- For properties with subterranean parking, there are some important issues to address, specifically regarding the removal of water that will likely accumulate in the garages, and prevent owners being able to get in or out of their vehicles. The most common water removal system for garages is sump pumps, which require testing and regular maintenance to make sure that they will function when you want them to. You should work with a local plumbing company to perform this work. It is important to remove any debris that may obstruct and clog the flow of water. It is also recommended to seal areas surrounding drains to ensure they will not leak.

Bottom line, use the lessons learned last winter to prepare for the coming winter.

Dan Huertas, Sales and Project Manager for Adco Roofing and Waterproofing, contributed to this article. Dan can be reached at [danh@adcoroofing.com](mailto:danh@adcoroofing.com), or at (800) 773-7663. ❖

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## Legislative Update

As we are now late in the year of 2019, the California legislature and Governor Newsom have likely approved legislation that has been in process all year, and it may be too late to make your voice heard this year. However, in future years we will let you know in July what is being considered so that you can contact your legislators. Here are the most important bills that we have been tracking, and by the time you read this, the information may be different. We would encourage your involvement earlier in the year (May-Sept). You can follow legislation on this site: <https://leginfo.legislature.ca.gov/faces/home.xhtml> and make your concerns known to your legislators.

The update (as of early September 2019 is as follows):

### SB323 Elections

This bill will make elections in HOA's more difficult and expensive. Nathan McGuire, Esq., the Chair of the CAI-CLAC committee commented on this:

*"The most recent version of SB 323 deletes the prohibition on individuals convicted of financial felonies from serving on the board, meaning a Board can do nothing to prevent someone convicted of embezzlement from serving. The result? It will be more difficult*

*for Associations to obtain D&O Insurance and Fidelity Bonds required by statute.*

**1. Privacy Concerns:** *Current law allows an HOA member to delete their information from membership lists made available to other members. SB 323 will make voter registration lists Association records, meaning they can be inspected by any members without an opt-out clause.*

**2. Increased Cost:** *Every Association will be required to change their election rules, bylaws and other documents in order to comply with SB 323, resulting in thousands of dollars in additional expenses that are unnecessary.*

### SB 326 The "Balcony bill"

This bill would require an inspection of a sampling of balconies and elevated walkways at least every nine years. The first inspection shall be completed by January 1, 2025 and every nine years thereafter in coordination with the Reserve Study. If the inspector discovers an immediate threat to safety, the inspector shall immediately provide a report to the association and to the local code enforcement agency. As of early September, this bill has overwhelmingly passed both the State Assembly and the Senate and is ready to be signed by the governor.

### SB 652 Entry Door - Religious Symbols

This bill would prohibit the governing documents of a common interest development from prohibiting the display of "religious items" on the entry door or entry door frame. A "religious item" means an item displayed because of sincerely held religious beliefs. The item cannot exceed a total size greater than 36 by 12 square inches, and must be removed by the owner for maintenance, repair, or replacement of an entry door, or door frame. This bill has been signed by the governor.

### SB 754 Election by Acclamation

The bill would require, when the number of director nominees at the close of the nomination period is not more than the number of vacant director positions on the board, that the nominees be considered elected by acclamation.

While elections by acclamation would be a wonderful thing, unfortunately, this bill was amended to only apply to associations over 6,000 units. Given that most, if not all, of the associations in LA County do not exceed 6,000 units this bill won't help much. The concept is excellent, and we will continue to push for "voting by acclamation" in all associations. ❖

## Mandatory Annual Financial Disclosures Due By December 1!

In 2014, the California legislature revised the manner by which common-interest-developments must notify their members of the annual disclosure requirements. The legislature created two types of reports: 1) the Annual Budget Report (ABR), and 2) the Annual Policy Statements (APS).

The preparation and distribution of the two annual disclosure packages to all owners is one of the most important requirements of the Board of Directors. The annual disclosures are now required to be organized into two sections.

November is the last month of the year in which this material must be distributed for associations who operate on a calendar year. If you utilize

a management company, then they should be handling this for you. If you do not have a management company, the Board is solely responsible for this important task.

The specific sections of the law that can be referred to for more specific information are Sections 5300 and 5310 of the Davis-Stirling code. Below is a summary of the requirements for each report.

The good news is that unless your rules (or policies) have changed, you can distribute the same set of Annual policy statements every year.

### ANNUAL BUDGET REPORT

1. Approved operating budget and

reserve allocation for the next fiscal year.

2. The most current Reserve Study which contains the following information:
  - a) The Executive Summary from the most recently updated Reserve Study.
  - b) Reserve Funding Disclosure Form/Table.
  - c) Board statements regarding the reserve study.
3. Master Policy Insurance and information regarding other policies.
4. Insurance disclaimer language verbatim from Civil Code
5. Association Loan Statement (if

*"Mandatory Annual Financial Disclosures...": continued on page 7.*

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## Earthquake Preparation For HOA Communities!

California residents have always been aware that we live in “earthquake country”. Seismologists are reporting California is overdue for a major earthquake. We experienced a reminder of this over the July 4th weekend recently. Earth scientists say that a “swarm” of quakes could act like the wick to a firework, triggering the infamous San Andreas fault to unleash a historic and devastating 7.0+ quake right through our nation’s 2nd largest city. The San Andreas fault typically shakes once every 200 years, but according to geological history it hasn’t since the 17th century. If 1680 was the last big one, LA is about 136 years overdue! Living in California requires all of us to be ready for “the big one”. Residents of common-interest-developments will experience this together and should prepare together. An earthquake of this magnitude would be considered a “disaster”. Disasters, by definition, are events that overwhelm police, fire, utility, medical emergency responders, and property management companies.

### Who should be involved in disaster preparation?

Disaster preparation must involve the entire community, owners and tenants. Every resident will be affected by a serious earthquake. This is not the time to distinguish as to who is an owner. In a disaster, everyone in the community is involved.

### Who should lead the effort to organize a meaningful disaster response?

While the board oversees the association, the leadership of this important task should be handled by a committee, again, comprising of both owners and tenants. The board already has a lot to do in any HOA, and undertaking this important task should involve the board, but not necessarily require their leadership, unless no one else is willing. The board may want to survey owners to see if there is any interest from residents to form a committee to address earthquake preparedness.

### Why is it necessary to prepare since we will have access to normal emergency services?

All the disaster preparation material urges us to be prepared to handle our own emergency response initially. A major earthquake will overwhelm the services that you would think you can rely on such as FEMA, local fire, police, medical, utilities, as well as your association management company. You will need to be prepared as a community to address the issues that will require immediate attention where you live.

### How should residents of a homeowner’s association prepare?

The best place to begin is to watch an excellent set of short videos, that can be found by going to YouTube and searching for “Map Your Neighborhood”. The “Map your Neighborhood” program was created in Washington state and is one of the model programs now being utilized in California. When you search on YouTube, you should see the word “TigardCERT”. This will help you identify the right video. The video contains 11 short parts. This would be a great video to share with owners in your community.

If you do a google search for “Map Your Neighborhood,” you may also find live training classes that are being offered in your area. You may be able to check with your local Fire Department or Red Cross for their training classes.

The “Map Your Neighborhood” program guides you and your neighbors through simple steps to help enhance your preparedness for an emergency. These steps will help you to quickly and safely take actions that can minimize damage and protect lives. It is designed to improve disaster readiness at the neighborhood level and teaches neighbors to rely on each other during the hours or days before fire, medical, police, or utility responders arrive.

The preparation involves making sure that individuals and neighborhoods are prepared and able to help themselves and each other medically and mentally for a length of time, possibly as long as two weeks. Do you have enough water, food and medical supplies for your family and pets? Do you know the resources (skills and equipment

“Earthquake Preparation For HOA Communities!”: continued on page 7.



# HOA Homefront – What Makes a Director Outstanding – Part I - Attitude

By Kelly G. Richardson, Esq. CCAL

A community association is no better than the board of directors which leads it, and excellent associations require excellent volunteer leaders. Truly exceptional volunteer governance is not a happy accident, and it often has little to do with a volunteer's background, training, and experience. Instead, it is the result of hard work and the pursuit of proper values, foundational understandings, and perspectives. This week launches a four-part series regarding what makes (or should make) a volunteer director truly outstanding.

*Attitude Makes the Difference.* All the knowledge in the world and the best experience means nothing if the volunteer has the wrong attitude regarding the position of HOA director. Look for people who demonstrate the attitudes described below.

Excellent board members understand that their position is one of service rather than control. They serve their neighbors; they don't supervise them. A service-forward attitude fosters a less defensive perspective in which new ideas and opinions are welcomed and not perceived as insults or threats.

The best leaders know that board service is not an accomplishment or distinction to be defended and preserved. Directors seeing the position as an achievement will be less likely to receive criticism and new ideas in a healthy manner, may be less willing to listen to the advice of others, will be threatened rather than encouraged by new ideas, and will be more deeply offended by disagreement. Directors concerned about their status may be prone to overly attend to protecting their reputation rather than the association's welfare.

Directors must understand their limitations. The best accept that they do not know everything; they rely upon managers, consultants, and committees. Such directors handle board disagreements much better by accepting the possibility that another might see or know something that they do not. Directors accepting that they don't know everything will be better listeners in board meetings; such

persons expect they will learn from their board colleagues. Such directors also will make much better use of open forum input from members, instead of viewing the opinions of others as a nuisance to be endured.

Handle disputes without hostility. During a term of board service, violations of the governing documents or other un-neighborly conduct will occasionally occur. Keep it business-like. Try to work things out. Gentle escalation is almost always preferable to "going legal" right out of the gate. The lawyer will always be there later if needed, but it is hard to ratchet down conflict once a lawyer is involved.

Don't assume that violating homeowners are disrespecting the board. They might not understand their rights and responsibilities. Give them a chance to do the right thing. Many homeowners do not fully appreciate the tradeoff of rights and responsibilities in HOAs, so explain to them not just the "what" of a rule but also the "why." As an association attorney, I find that the healthiest initial assumption is that the homeowner didn't understand what they were required to do (or not do).

Be a peacemaker. Don't be too quick to take sides in a dispute between residents, unless there is independent corroboration of the problem. You may know one of the two disputants, but you may not know all the facts. Encourage residents to work things out as neighbors.

This article is Part 1 of 4 parts. To find the remaining 3 parts, please go to: <https://richardsonober.com/tag/director/>

Kelly G. Richardson CCAL is a Fellow of the College of Community Association Lawyers and Senior Partner of Richardson Ober PC, a California law firm known for community association advice. Send questions to [Kelly@richardsonober.com](mailto:Kelly@richardsonober.com). Past columns at [www.HOAHomefront.com](http://www.HOAHomefront.com). All rights reserved®. ❖





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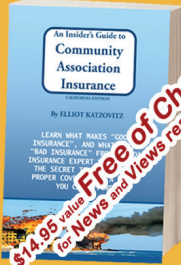
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# Earthquake Insurance Considerations



Timothy Cline, a leading expert in the area of HOA insurance provides his insights regarding earthquake insurance for common-interest-developments.

## What is your best advice to HOAs regarding earthquake (EQ) insurance?

Assuming the Association has already purchased earthquake coverage on the building, my best advice to board members is to CONTINUE to educate individual owners about the importance of **purchasing and maintaining their own individual unit owner coverage** to supplement what the Association has acquired. Aside from the Ridgecrest area where a moratorium currently exists, individual earthquake coverage is readily available throughout the rest of California and it's never been more important.

In my opinion, the single most important coverage an owner can maintain individually is a coverage called **Earthquake Loss Assessment Coverage**. This coverage protects an individual owner against a special assessment the Board must levy to cover the deductible. In the absence of earthquake coverage on the Master Policy, the Board may be forced to levy a Special Assessment to address each owner's proportionate share of the **entire** damage to the project.

If the Association does NOT maintain earthquake coverage, then I would advise the Association to consider regularly utilizing some sort of "advisory" secret ballot to respond to the changing earthquake marketplace and increased interest in earthquake coverage as a result of the recent activity. This ballot (and the accompanying literature) would also continue to remind owners that their investment is not protected resulting in them walking away should there be a catastrophic earthquake. A regular discussion will remind the Board of Directors that there's no protection provided by the Association's Directors & Officers coverage should either the Board or the Manager be sued for failing to maintain earthquake coverage.

## How does EQ insurance interact with the California Earthquake Act (CEA)?

The CEA was written precisely with the unit owner in mind. This video describes the four coverages best: <https://www.clineagency.com/portfolio-items/why-isnt-the-associations-earthquake-policy-enough/>.

## Can an owner obtain a CEA without the Association having a policy?

Yes, the CEA is required to write coverage regardless of whether the Association maintains earthquake coverage.

## Is it possible that with an HOA earthquake policy, CEA, and the HO-6 policy that an owner can completely cover their potential loss? If so, how?

Whether you live in a single-family home or a condominium, there's never a way to "completely" cover your loss. The combination of a well-written Master Policy purchased by the Association and the Condominium EQ Policy written by the CEA will provide some of the best coverage possible, but both policies have complex insurance coverages, some limitations and, of course, deductibles apply.

## What other comments would make regarding the current earthquake market?

Earthquake rates for condominium associations are going up in the first time in 10 years. To maintain coverage as budgeted, I suspect Board members will be entertaining higher deductibles. That's a critical place where the California Earthquake Authority (CEA) could step in. Because the CEA offers \$50,000, \$75,000, and \$100,000 in EQ Loss Assessment Limits, the Association could consider higher deductibles - BUT, they have to do a really good job of educating owners as to why EQ Loss Assessment Coverage is so critical.

**Some areas are being hit higher than others.** San Francisco, and Los Angeles/Orange counties will be hit the hardest with policies seeing an average of 10% to 15% increase. Accounts with poor soils, liquation, soft-story parking, or prior earthquake damage will experience

*"Earthquake Insurance Considerations": continued on page 7.*



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*"Earthquake Preparation For HOA Communities!": continued from page 4.*

inventory) in your neighborhood?

- Take care of yourself and family first.
- Protect your head, feet and hands with protective clothing.
- Check for injuries and natural gas leaks at your home.
- Shut off the water at the house main to preserve clean water and avoid outside contamination.
- Place a large HELP or OK sign on front door or window for emergency teams.
- Put one of your fire extinguishers on front curb to put out small fires.
- Go to the Neighborhood Gathering Site.
- Form teams to: 1) listen to radio for alerts; 2) check on elderly,

disabled, children, animals; 3) check gas and water leaks; 4) check homes with HELP signs or with no sign.

- Return to *Neighborhood Gathering Site* to share responses, communicate needs to the city, plan next steps.

Taking the steps to be prepared will remove some of the fear and uncertainty in dealing with the huge anxiety caused by even the thought of an impending earthquake or *the big one*.

Other Resources to check out:

<http://www.ESPfocus.org>: This site has great information and copies of regionally specific brochures *County of Los Angeles Emergency Survival Guide* and *Get*

*it Together!*

<http://www.alert.lacounty.gov>: ALERT LA County (Los Angeles County's Emergency Notification System - formerly SNAP - Specific Needs Awareness Planning) - is a FREE mass notification system for LA County's residents, schools and businesses. The system will contact you when an emergency or a critical situation happens (reverse 911). Register your phone number through their website.

<http://www.cert-la.com> : CERT (Community Emergency Response Team) - This FEMA-sponsored effort is a more intensive all-hazard training, and free classes are held in most communities. ❖

*"Earthquake Insurance Considerations": continued from page 6.*

the greatest increases (in any zone). Despite these increases, in most cases, the annual premium will still be LESS than the Association paid ten years ago (that's how much the premiums have decreased on most accounts).

**Wildfire exposure is becoming a HUGE issue right now.** Planned unit developments that are on the edge of the designated brush area have experienced increases of 200 to 300%, or more. We've been working with the Excess and Surplus Lines

marketplace to find an affordable solution for planned developments that are facing similar challenges. It's not a pretty environment and we've got our best people working on finding a solution. This post-wildfire environment is tough for properties that have even a modest brush exposure. Also, the definition of "brush exposure" has changed dramatically as underwriters learn how far embers can travel during these firestorms.

According to the California Department of Insurance, the Insured Wildfire losses from just November of 2018 was more than 12 billion Dollars. That's just a single month. And 2018 wasn't just a

one-off. According to the *National Interagency Fire Center*, in 2015, more than 10 million acres burned in the United States. In 2016, it was only 6 million, but then 2017 was back up to 10 million, and 2018 saw about 9 million acres burn. Whether you call it "Global Warming" or "Climate Change," it sure seems like the wildfire season is upon us and the carriers (and underwriters) are nervous.

In closing, it is always recommended to meet with your insurance agent annually to ensure that your property is insured as it should be.

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*"Mandatory Annual Financial Disclosures...": continued from page 3.*

- applicable)
- 6. FHA Certification
- 7. VA Certification

**ANNUAL POLICY STATEMENT**

- 8. "Communication with the Association" statement
- 9. Overnight mailing address statement
- 10. Secondary address statement
- 11. General notices statement
- 12. Association minutes statement
- 13. Assessment Collection Policies statement
- 14. Collection Policy
- 15. Association Rules and Regulations including Fine Policy,
- 16. Dispute Resolution Procedures (ADR/IDR Rules)
- 17. Architectural change rules and

procedures

The deadline for all associations is thirty days prior to the end of the year, unless your documents have a stricter time frame. While these disclosures may appear excessive, they serve to alleviate the Board of future liability. These disclosures meet the annual requirement of the association to disclose important aspects of your association to the owners, who are then responsible for disclosing them to future owners. **Boards need to take this legal requirement seriously.**

If this requirement is news to you, and you have not provided this to your owners in the past, you can obtain more information by researching Sections 5300 and 5310 of the Davis-Stirling code. ❖



## BEVEN & BROCK

# NEWS & VIEWS

for Homeowner Associations

## HOA BOARD MEMBER EDUCATION

Education for volunteer HOA board members is essential for success as board members. Due to the ever-increasing complex and changing nature of the laws and regulations that impact common-interest-developments staying on top of these changes greatly increases a board's member ability to succeed in their role, and operate in confidence

There are several ways for board members to be educated, and Beven & Brock offers two free ways.

### Upcoming events:

#### Board Training: Dates To Be Announced In January Newsletter

Three hour training course for HOA current and prospective board members. A course syllabus and Certificate of Completion is provided. This class is taught by Kelly Richardson, Esq. of Richardson Ober, PC, and is co-sponsored with the Community Associations Institute. Seating is limited, and reservations may be made by emailing: BoardTraining@bevenandbrock.com. Priority is given to current Beven & Brock managed associations due to space limitations.

#### October 22, 2019 - HOA FREE Board Seminar and Vendor Expo

See page 1 for more information



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