



# BEVEN & BROCK NEWS AND VIEWS

DAVID BROCK, PCAM



## Board Service Doesn't Have to Be Difficult

It has been true for a long time: few want to serve on the board and those who do often get tired and want to stop serving within a few years. A small percentage of board members serve for many years, until they are challenged by an owner or a small group of owners who don't like something the board has done. At that point the long-term serving board member decides that he or she has had enough. This is a fundamental and recurring problem in many HOAs. If an association doesn't have good leadership and a method for transition to the next leadership, there will likely be some challenges ahead.

The following thoughts are offered for HOA boards to consider:

See "Tips" on Page Four

## *Bans Are Growing*

# Where There's Smoke – Restrictions Loom

By Tim Howett, Esq.

Many California condominiums and planned unit developments already prohibit smoking in the common areas – in enclosed lobbies, hallways, and subterranean parking garages, outdoor facilities such as pool areas, tennis courts, and walkways, and even balcony and patio areas. If your association has not yet considered smoking restrictions, does it make sense to do so now? Given recent trends in California law, common area smoking restrictions may offer associations protection from this newly expanding source of potential liability.

Within the last few years, various federal and California state agencies have designated second hand smoke as a hazard to public health. Therefore, the federal government and a number of states and municipalities have banned smoking in a variety of public spaces, such as workplaces, airplanes, restaurants, beaches, and other places of public congregation. These efforts are now trickling down into the private sector, including to multi-family housing such as common interest developments.

Two recent agency decisions are most significant to the regulation of second hand smoke in California common interest communities. First, the U.S. Environmental Protection Agency has declared second hand smoke to be a Group A carcinogen. Second, in 2007 the California AQMD became the first in the nation to issue a finding that second hand smoke is a toxic pollutant.

The California Legislature has not yet enacted laws prohibiting smoking in private common interest communities. However, it has not been from lack of trying. Proposed legislation was introduced into the California Legislature, in 2003 (AB210). AB210 was so poorly received that it has not yet been reintroduced. More proposed legislation, though, given the AQMD's finding, is likely only a matter of time.

Anti-smoking groups in California have, since their failure in Sacramento, directed their focus on encouraging private common interest communities to voluntarily convert to smoke-free communities, in one form or another. A recent court decision has given some momentum to those efforts.

In 2009 a California appellate court, following a national trend, held that the owner of a multi-family apartment community could be liable in nuisance for permitting outdoor smoking which caused second hand smoke exposure to a resident. In that case, *Birke v. Oakwood Worldwide*, the father of a five-year old girl with allergies and asthma, asked the Oakwood Apartments' owner and manager to ban outdoor smoking as it was causing injury to his daughter. When they refused, he sued them on a nuisance theory. While the appellate court did not specifically hold the owners liable in nuisance, it agreed with the plaintiffs that the claim should be permitted to go to a jury.

In rendering its decision, the appellate court held that the property owner and property

See "Smoking" on Page Two

*Try a Summer Barbeque, Potluck or Movie Night*

## Parties Can Be the Antidote to Community Conflict

Conflict within associations is a prevalent issue. However there is a constructive way to address conflict. Very often conflict can arise for very understandable reasons, often two persons seeing a situation from two very different viewpoints.

Conflict can be and is reduced in associations that find ways to gather residents in informal and social settings. It makes sense that if you know your neighbors in casual gatherings first, when an issue arises that could be a source of conflict, there is a much better opportunity for a favorable resolution.

There are two ideal times in the year for

associations to host informal gatherings of owners: summer and the holidays. As summer approaches it is a good time to plan an event.

Some associations plan a potluck barbeque in the common area. Others have used a projector to show a movie on a big screen. A gathering like this should not be viewed as an opportunity to conduct business. That alone might just keep people away. People usually will agree to come to a barbeque more readily than coming to an annual meeting.

Here are some practical ideas to make a successful event:

- A committee should be formed to

plan and execute the event. This is not something the board should do – they have enough to do already.

- The planning should be as fun as the event. This is an opportunity for outgoing party planning types to work together. It is definitely a group effort.
- Plan well in advance to assure good attendance.
- Be proactive in inviting people to attend. Some people need some extra encouragement.

It will take some work but it has great potential to restore a sense of community to your community association.

## Smoking May Pose a Potential for Liability as a Nuisance

*Continued from Page One*

manager “plainly have a duty to maintain its premises in a reasonably safe condition”. The court also held that the property owner’s decision to allow smoking in the outdoor common areas created a condition which was harmful to health, and interfered with and obstructed the residents’ free and comfortable use of the common areas of the property.

This portends that homeowner associations in California could now potentially

be held liable by residents on a nuisance theory for failing to restrict smoking in common areas. Homeowner associations may therefore wish to consider amending their governing documents, including their CC&Rs and Rules and Regulations, to restrict indoor and outdoor common area smoking.

It is, of course, easier for associations to amend their Rules and Regulations than their CC&Rs. Associations may implement rule changes in accordance

with their governing documents and Civil Code Section 1357.100 by a majority vote of the board of directors. In order to amend their CC&Rs, associations must obtain the affirmative vote of at least a majority, and in most cases a super-majority (up to 75%), of the membership.

However, a smoking restriction is more likely to be upheld if adopted as a CC&R amendment than as a rule change. First, obtaining the approval of the membership for a CC&R amendment indicates strong community support for the restriction. Furthermore, California law provides that use restrictions contained in the CC&Rs carry with them a presumption of reasonableness, which means that a controversial restriction such as a common area smoking ban may be more likely to withstand a subsequent legal challenge.

Associations considering common area smoking restrictions may also wish to

*See “Bans” on Page Four*



Of Arcadia and Pasadena North  
Office: (626) 447-4111 Toll: (888) 600-4411  
Fire & Water – Cleanup & Restoration  
Mold Remediation  
Soot and Smoke Removal  
Packout & Storage  
Repairs after Damage  
**24 Hour Emergency Live Response**  
**WE SERVICE ALL OF L.A. COUNTY**



**GARDEN VIEW INC.**  
High Quality Gardening Services  
'Specializing in HOA Landscape  
Maintenance'  
(626) 303-4043  
www.garden-view.com  
email: Blake@garden-view.com



**FERRIS PAINTING**  
Commercial & Residential Painting  
Specializing in HOA's  
Greg Lewis (818) 951-3207  
www.ferrispainting.com  
License #872494

# Worker's Comp Insurance Is Strongly Recommended

Homeowner associations are advised to determine whether or not their insurance program includes a Worker's Compensation policy and, if one has not been purchased, they are strongly encouraged to obtain one. Fortunately, a minimum policy is not expensive and it is well worth the risk.

Worker's comp is a "no-fault" insurance system that pays benefits to workers injured on the job. Workers compensation is mandated in California for any employer. Most associations claim to have no employees and believe that they are exempt from this requirement. The problem is that California is notoriously liberal in its definition of an "employer/employee" relationship and the determination will not be fully made until after someone is injured and only then by the Workers' Compensation Appeals Board. Determinations by the Appeals Board are by law required to be "liberally construed" in favor of the "employee".

Why are associations recommended to have a worker's comp policy? Some association board members opt to not purchase worker's comp because they have made a determination that they never hire uninsured and unlicensed workers. There are several problems with this position:

- It is possible that a future board member will hire an uninsured person and be unaware of the policy of a previous

board to hire only insured workers.

- It is possible that the contractor may misrepresent the truth to get hired and the association would still be responsible.
- A contractor may pick up a day laborer because extra help is needed.
- It is possible that even though a contractor has been completely researched prior to the inception of the job that their insurance lapses during the work.
- You may currently, or in the future, decide to pay a homeowner a small amount of money to change light bulbs or pick up junk mail. This is a very cost effective way to deal with these issues, as it would likely cost much more to pay a fully insured janitorial service for the same work.

Based on these issues, and others, the best "fail-safe" position for every association is to have a minimum policy, so that there is a policy to fall back on. A minimum policy is \$524 per year, available through the Timothy Cline Insurance Agency. State Farm offers a minimum policy for \$785 per year, however, if all subs provide a Certificate of Insurance and there is no casual labor, the cost is reduced to \$250 per year. A worker's comp policy is subject to audit, so if uninsured persons are utilized during the year, the association may be charged an additional amount.

For additional information or recommen-

dations on this issue, consult your insurance agent. If your agent advises your association against obtaining a policy for some reason, be sure to get that in writing, and confirm this with your attorney. If there is a problem in the future, there is no coverage available through either the Directors & Officers coverage or General Liability for this type of claim. There is no ceiling on the amount an injured worker can claim – including reimbursement for pain and suffering, however, there may be a cap on your Agents Errors and Omission's Policy assuming it will help provide coverage if necessary.

The best solution is to obtain a minimum worker's comp policy.

## Upcoming Seminar – Strategies for Addressing Maintenance Issues

Whether you are considering re-roofing, re-painting or addressing a long-standing below grade water intrusion issue, there are proven strategies that will provide for a longer lasting product, which means savings over the long term. The seminar is set for 6:30 p.m., Oct. 18; location to be announced. For seminar information phone (626) 795-3282 ext. 886 or email [HOASEMINARS@bevenandbrock.com](mailto:HOASEMINARS@bevenandbrock.com).

### HOWETT ISAZA LAW GROUP, LLP

Timothy M. Howett, Esq.

65 N. Raymond Avenue, Ste. 240  
Pasadena, CA 91103  
ph (626) 564-9400 fx (626) 564-9401  
[thowett@HiLawGroup.com](mailto:thowett@HiLawGroup.com)  
[www.HiLawGroup.com](http://www.HiLawGroup.com)



### MERRY PLUMBING HEATING & AIR

(626) 796-4307  
[www.merryplumbing.com](http://www.merryplumbing.com)  
License # 860445



### NICK GERIS & SONS PAINTING, INC.

Association Painting Specialists

Dial (714) 639-1510 Cell (714) 325-1511

[www.nickgerisandsonspainting.com](http://www.nickgerisandsonspainting.com)

Lic. #836127



### JOHN R. SINNER INSURANCE AGENCY INC.

1230 E. Main St. Alhambra, CA 91801

Toll Free (800) 516-1078

Fax (626) 576-8049

[www.johnsinner.com](http://www.johnsinner.com) License # 0589670



FARMERS

### STEVEN G. SEGAL INSURANCE AGENCY, INC.

Over 30 Years experience specializing in:

- Condominium Associations
- Planned Unit Developments
- Earthquake Coverage
- Workers Compensation

Toll Free: 800-345-8866 Fax: 800-262-0973

Email: [steve@segalins.com](mailto:steve@segalins.com)

Web: [www.farmersagent.com/ssegal](http://www.farmersagent.com/ssegal)

CA License # OE24660

# Solutions for Meeting the Challenges of Board Service

*Continued from Page One*

- Have meetings, but only as often as minimally necessary. Unless there is a urgent matter, meeting monthly, (or quarterly, if allowed in your documents) is fine. Before you stop reading this because this point sounds like more work, consider whether you want to be on call 24/7 by email, or if a meeting for an hour once a month might be better.
- As a board member, don't ever work alone. Always share the board duties with other like-minded individuals. Making decisions as a group does relieve the pressure of a single board member being perceived as the one behind policies that owners find unfavorable.

- Between meetings, do only the minimal. Delegate everything else to vendors and/or committees. Act between board members on only urgent or emergency issues. This includes emails.
- If you can't delegate successfully to vendors, speak to your vendors about modifying their service. Empower your vendors to make decisions according to the board's policies which have been agreed to by the full board.
- Make sure owners know that you are NOT the on-site manager, and that you are a board member only when undertaking association business, which is generally reserved for board meetings.
- Welcome owners to attend the board

meetings and speak to the board during the open session.

- Don't attempt to operate in secret or give that impression to owners. Keep owners informed: distribute minutes or do a simple newsletter. It may be necessary to educate owners on your role as a volunteer, and that some issues take time to resolve.
- Always operate with the association's best interest in mind.
- Don't feel that you have to KNOW or DO everything. Remember you are a volunteer, not an employee. Obtaining outside occasional help is sometimes necessary and appropriate.
- Be on the watch for future board members who understand the concept of life in a community association. Encourage them to join the board.

---

## Bans Can Even Include Interior Areas

*Continued from Page Two*

inquire of their local municipality's efforts to curb smoking in multi-family housing. Several cities in California, including the San Gabriel Valley cities of Glendale, South Pasadena and Burbank, have recently adopted ordinances banning smoking in the common areas, and on balconies and patios, of condominium complexes, on the basis that second hand smoke constitutes a nuisance and a trespass. South Pasadena's ordinance will extend the smoking ban to the interior of condominium units by September of 2013. Pasadena's City Council considered the implementation of a similar

ordinance at its council meeting in April. Homeowner associations should keep themselves and their memberships apprised of these developments, and consider how they might address such concerns within their own communities, as second hand smoke restrictions are sure to be an active source of conversation and concern within our communities over the next couple of years.

*Tim Howett is managing partner of Howett Isaza Law Group LLP, a law firm specializing in community association law. He can be contacted at (626) 564-9400 or [thowett@hilawgroup.com](mailto:thowett@hilawgroup.com).*

---

### NEWS & VIEWS

This Newsletter is circulated for general informational purposes as a public service and promotion by the Beven & Brock Property Management Company. The contents are opinions of the firm, not intended to constitute legal advice, and should not be relied upon for that purpose. If you have a legal issue related to a subject of this newsletter, you should consult the California Civil Code and your attorney. Editing & Layout by PM Enterprises, 626-799-5985.

The paid advertising in this newsletter is provided as a courtesy to our readers and does not constitute any endorsement by Beven & Brock. The vendors do work with HOAs and have provided services to Beven & Brock's HOA clients in the past.

---