



BEVEN & BROCK NEWS AND VIEWS

DAVID BROCK, PCAM



THE BOARD: MEETING THE CHALLENGE

How do board members balance their career, family and personal interests while addressing the demands of their position on the board? The answer is that it's not easy. Board member volunteers are faced with increasing legislative requirements and relevant HOA case law, constant emails that seem to demand immediate attention, the need to be vigilant to their fiduciary and good faith duties to the association, and the responsibility to address the assets of the association both financially and with proper maintenance.

The following tips may encourage other homeowners to participate in service on the board of directors while combating burnout of current board members.

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Protecting the Association's Position

The Benefits of Judicial Foreclosure

By Veronica R. Pawlowski, Esq.

In the current economic climate, collection of delinquent assessments is complicated by the fact that many owners are "underwater" on their properties. Ironically, some owners view a threat of foreclosure by the association as a relief. They think "go ahead and take it – then you can deal with my bank!"

With these circumstances in mind, associations must utilize the foreclosure method that offers the greatest opportunity to navigate the hurdles of today's economy. Judicial foreclosure is the most flexible collection method available to associations. The benefits of judicial foreclosure include the following:

An association's lien is subordinate to the bank's mortgage.

This means that if the bank forecloses, the association's lien is "wiped out" as part of the bank's foreclosure process. If an association pursues non-judicial foreclosure and the bank forecloses first, the association's collection attempt comes to an abrupt end.

Judicial foreclosure, on the other hand, involves filing a lawsuit in superior court for breach of CC&Rs and foreclosure. If the bank forecloses halfway through the process, the association loses the option of foreclosure but can continue its lawsuit without delay and obtain a personal judgment against the owner based on the breach of contract (the CC&Rs).

A personal judgment allows the association to pursue enforcement methods such as wage garnishments, bank account levies, attachment of rents, etc. Personal judgments are also recorded in any county where the owner has property so that the owner may not sell any other property without satisfying the association's judgment. Finally, judgments are valid for 10 years (or more) so that even if an owner is without assets in the current economy, there is a long-term potential for recovery by the association.

As mentioned above, judicial foreclosure involves filing a lawsuit in superior court.

Even if the amount demanded is relatively low, the association does not have to file in small claims court because the lawsuit seeks foreclosure (in addition to a money

judgment against the owner). Superior court does not have jurisdictional limits. We often see associations that are owed in excess of \$5,000 limit their claim to \$5,000 to fall within the jurisdictional limit of small claims court. Judicial foreclosure allows the association to pursue foreclosure and a money judgment simultaneously and it allows the association to pursue the full amount owed without limiting its claim to the jurisdictional amounts of small claims.

With judicial foreclosure, all remedies are pursued concurrently. And, if the judicial fore-

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An HOA has multiple options in collecting delinquent assessments

A Master Policy May Settle Concerns

Don't Let Earthquake Insurance Shake Your World

By Marie Cummings, CCAM

As Southern Californians our hearts have gone out to others as we have watched earthquakes take their toll on lives and property in recent months. If you are like me, you have sent donations to help the victims of the disaster, counted your lucky stars, and asked, "am I prepared?"

A master earthquake insurance policy for your homeowners' association can be one step in your earthquake preparation. As a service to the associations it manages Beven and Brock obtained earthquake insurance quotes for associations that do not carry a master earthquake insurance policy. The quotes were submitted to the boards of directors of those associations. Additionally, the boards were and continue to be encouraged to survey their homeowners as to whether or not the homeowners want the association to carry earthquake insurance and whether or not the homeowners want the association to add or cancel earthquake insurance before any action might be taken.

Weighing the expense of earthquake insurance against the potential financial exposure of a catastrophic property loss is difficult. The following are a few items for consideration in a "what if" scenario: a severe earthquake hits, the association

structures and common areas are damaged and the association does not have a master earthquake insurance policy.

1. Does the association have enough money to rebuild or repair the structures? Or how will the association get the money? Will a large special assessment suffice or be possible? The board will have the fiduciary duty to determine how to rebuild whether there is earthquake insurance coverage or not.

2. Will the board have liability coverage protection from homeowners who are angry that the association does not have a master earthquake insurance policy? Not likely. Directors and Officers Liability coverage may have an exclusion regarding the "failure to maintain" earthquake coverage. So, if there was an earthquake and the board was sued, the board would likely not be covered under their D&O policy.

3. As a homeowner, will I be able to afford to walk away from the equity investment I have in my home? If the association cannot afford to rebuild the structures, a homeowner will not be able to rebuild the interior of their home.

Preparation is the best defense against a catastrophic earthquake. As part of your preparation, Beven and Brock encourages

you to consider earthquake insurance, and to consult your professional insurance agent for details

Cummings Earns CCAM Certification

Beven & Brock is pleased to announce that Marie Cummings was recently awarded the designation of Certified Community Association Manager (CCAM) by the California Association of Community Managers, Inc.

In order to be certified she successfully completed an intensive educational curriculum which included instruction and testing in community association law, financial management, association operations, communications and ethics. In addition, a standard of practical experience in the community associations management industry had to be achieved prior to certification.

To maintain certification, all certified managers must complete ongoing continuing education requirements, belong to a trade organization and subscribe to the Code of Ethics. This provides a high degree of protection to homeowner associations.

Beven & Brock requires all of its managers to be certified in order to provide the highest level of professional service to its clients. The law requires that property managers disclose whether or not they are certified although certification itself is not a requirement to be a property manager.

We congratulate Marie on her accomplishment. We know she will be successful in this field as she has already proven to be a great addition to our staff. She is a San Gabriel valley native and has worked in the past for Farmers Insurance and Washington Mutual Bank.



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For HOA Board Members It's 'Work Smarter, Not Harder'

By Roman Esparza, CCAM

In community associations the board of directors can spend countless hours researching various HOA projects in order to provide their community with the best quality work possible at the best price.

Board members can become frustrated by working with different vendors, who may be qualified, licensed and insured, but can offer different ideas and pricing for simple repairs and/or project improvements.

The board of directors can "work smarter, not harder" by following some of these simple ideas:

1. Design a job specification worksheet when sending out an RFP (Request for Proposal). The board can outline the exact work needed with any given project in a "job spec." If board members are unsure of the exact specifics needed they should consider hiring a construction consultant to assist them in drawing up a good, comprehensive job specification checklist.

2. Ask the vendor for a rendering of what the final job will look like. Vendors such as a landscape company, painting company, pool plastering contractor and others can often provide color renderings of what new plants or trees will look like when planted. Or, a painting company or pool plaster-

ing company can show you in full color, what a new color scheme will look like on the buildings, or how the new pool tile will match the pool surroundings when completed. These renderings can take the guess work out of projects and make the board's job easier and help ensure that the final product looks like what is expected.

3. Limit the number of companies that submit proposals. Reviewing bids from more than three, or even four, vendors can cause more harm than good. The board should review all the vendors' qualifications prior to sending an RFP. Only vendors who are qualified to perform specific projects and repairs should be sent an RFP. Board members can verify contractors qualifications by visiting the Contractors State License Board online at www.cslb.ca.gov or by calling 800-321-CSLB. This will help prevent companies that are not qualified from submitting proposals at pricing that may be well below what a well-qualified contractor would charge and could possibly leave the community with less than quality work.

By using some of these simple tips, board members can feel more comfortable making decisions and ensure that they work smarter, not harder.

Roman Esparza is a Certified Community Association Manager (CCAM) at Beven & Brock. He has been managing homeowner associations for 21 years.

Choose Legal Representative Carefully

Continued from Page One
closure process is being handled by a full-service HOA law firm where collection work is attorney-supervised, that one law firm can handle all aspects of the process, including recording the lien, filing the lawsuit, handling any requested mediations, drafting settlement agreements, and obtaining a judgment. In the end, this can help keep the association costs down because one service provider is responsible for the entire process.

It's a tough time for associations. In a time where many owners are "underwater" and may be facing foreclosure from

multiple parties, collection efforts are not as simple as threatening foreclosure. Under these circumstances, an association is best served by pursuing foreclosure and a personal judgment concurrently because doing so gives the association multiple chances at collection without having to initiate multiple collection methods.

Veronica R. Pawlowski, Esq is a Senior Associate at Pasadena-based law firm Richardson & Harman, PC specializing in assessment collection, general HOA advice and litigation. She can be contacted at vpawlowski@rh4law.com or 626-449-5577.



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The Board: Keep Your Perspective – and a Sense of Humor

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1. One of the least desirable aspects of board service is the feeling that you are viewed as the building manager and that you are always on duty. Succumbing to this role should be avoided because not only does it rob you of your leisure time, but it sends the wrong message to your fellow homeowners. If other homeowners perceive that being on the board means being the on-site manager, it may discourage them from running for board positions in the future. Communicate to your fellow homeowners that you are not available 24/7 while showing them that you are responsive to them in board meetings. This should help you and encourage other homeowners to respect your time.

2. Never operate alone as a board member

unless you have the express authority from the other board members to speak for them. No single board member has any more voting power than any other member. Working as a team decreases the burden for all board members, and it is the right thing to do. If your fellow board members have all resigned, or are inactive, you can and must appoint replacement board members.

3. Utilize respected, reputable and trusted vendors who strive to be the best in their field. Ask them for their advice and counsel and rely on it. There is no expectation that board members must know everything there is to know about operating an association. The best protection that exists for a volunteer board in making decisions is

relying on the counsel of others who have the credentials in a particular field.

4. Conflict avoidance doesn't have to be difficult, and employing a few simple strategies may help avoid greater conflict later. Listen to owners at board meetings. Treat all owners fairly and with respect. As a board, be transparent in making all but emergency decisions during board meetings only. Be mindful and communicative of your fiduciary duty to the association to avoid personal agendas.

On any given day these pointers can be easier said than done, so keep a sense of perspective and a sense of humor.

Free Seminar on Maintenance Issues

Beven & Brock highly values education for board members of homeowner associations and has been offering seminars for board members on a variety of topics since 2005. Our next seminar will address "Strategies for Addressing Maintenance Issues" and will be held in Pasadena on the evening of Oct. 18. A local HOA attorney, an insurance professional, a representative from a bank that makes association loans and a roofing consultant will be featured speakers. The seminars are free, however,

reservations must be made. To obtain more information about this or similar events, contact us at 626-795-3282, ext. 886, or by email at HOASEMINARS@bevenandbrock.com.

Board members of associations managed by Beven & Brock will be offered a three hour board training seminar beginning in October. Information on this seminar can be obtained at boardtraining@bevenandbrock.com.

NEWS & VIEWS

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