



# NEWS AND VIEWS

*for Homeowners Associations*

DAVID BROCK, PCAM



## MANAGER CERTIFICATION: The Annual Disclosure

Certification of CID Managers has been a law now for 10 years. The intended purpose of the law is "DISCLOSURE". Boards should know if the management company they are hiring (or has hired) has certified managers on their staff. There is no requirement that managers be certified however the law requires that managers or management companies disclose that they are certified (or not) prior to entering a contract and annually thereafter.

Given the fact that for most people, their home represents their most important financial asset, it would make sense to not allow your investment to be managed by

*( continued on page 2 )*

## Model Code of Ethics for Community Association Board Members

As a new year begins, it's a great time for Board members to evaluate their commitment as a Board member to their association. This sample code of ethics as provided by the Community Associations Institute (CAI) is not meant to address every potential ethical dilemma encountered by a community association board member, but is offered as a basic framework that can be modified and adopted by any common-interest community.

### Board members should:

- Strive at all times to serve the best interests of the association as a whole regardless of their personal interests.
- Use sound judgment to make the best possible business decisions for the association, taking into consideration all available information, circumstances and resources.
- Act within the boundaries of their authority as defined by law and the governing documents of the association.
- Provide opportunities for residents to comment on decisions facing the association.
- Perform their duties without bias for or against any individual or group of owners or non-owner residents.
- Disclose personal or professional relationships with any company or individual who has or is seeking to have a business relationship with the association.
- Conduct open, fair and well-publicized elections.
- Always speak with one voice, supporting all duly-adopted board decisions even if the board member was in the minority regarding actions that may not have obtained unanimous consent.

### Board members should not:

- Reveal confidential information provided by contractors or share information with those bidding for association contracts unless specifically authorized by the board.
- Make unauthorized promises to a contractor or bidder.
- Advocate or support any action or activity that violates a law or regulatory requirement.
- Use their positions or decision-making authority for personal gain or to seek advantage over another owner or non-owner resident.
- Spend unauthorized association funds for their own personal use or benefit.
- Accept any gifts—directly or indirectly—from owners, residents, contractors or suppliers.

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*MANAGER CERTIFICATION: The Annual Disclosure, continued...*

managers who are not certified. This is why the California legislature made this disclosure law a reality in 2003. Boards should find out if the property supervisors (or managers) are certified, and additionally if the company is insured. Boards should look for professional designations when hiring a manager. Working with a Certified manager is worth the cost (if there is a cost difference) because knowledgeable managers help steer their associations through the maze of regulatory compliance thereby reducing potential liability and making it easier for volunteer directors to meet their fiduciary duties.

What does Certification involve? To become a certified manager the process takes about two years or longer depending on the designation, to complete the required courses and receive the experience necessary to become approved. There are continuing educational requirements, as well, and re-certification must be completed every three years. Certification indicates that a manager has achieved certain levels of training in the management of common interest developments.

On a practical level, a manager who takes the time and money to invest in becoming certified is committed to this industry. They plan on being in this industry for an extended period

of time and this isn't a career that they are trying out to see if it works. Managers who are in this industry for the long term are the kind of managers that you want to have working for you, and not someone who has applied for a position because of an economic downturn in another field. Certified managers will work harder for their Association clients as they value their reputation and they don't intend on changing careers.

A requirement of Certification is membership in a industry related trade organization, of which there are two: the California Association of Community Managers (CACM) and the Community Associations Institute (CAI). CACM is a California specific organization and CAI is a national level organization with many chapters around the country. Both organizations have "codes of ethics" and "standards of practice".

By way of disclosure all of the Beven & Brock Association Managers, and Principals of the firm are Certified common interest development managers. Each of the following have met the requirements of the Business and Professions code, section 11502.

The following managers are certifications are current and are certified by CACM, which is located at 23461 So. Pointe Dr., Ste 200, Laguna Hills, CA 92653. The phone number is 949 916-2226.

All of the names listed below have been actively managing associations prior to the dates indicated, but have been certified with CACM from these dates.

C. Finley Beven, since 1994, *status is Emeritus*  
 Vianna Boettcher, since 2006  
 Paul Cannings, since 2003  
 Marie Cummings, since 2011  
 Roman Esparza, since 2009  
 Juanita Flores, since 2004  
 Laura Garbo, since 2003  
 Lori Lacher, since 2003  
 Sue Threadgill, since 2003.

The following managers are certified with the Community Associations Institute, located at 6402 Arlington Blvd., Suite 500, Falls Church, VA 22042; Phone: (703) 970-9220, and they are current:

David Brock, PCAM designation, since 1990.

Marilyn Howald, CMCA designation through the National Board of Certification, since 1996.

The location of the manager's primary office is 99 S. Lake, Suite 100, Pasadena, CA. 91101.

If your Association is managed by another firm and you have not received the annual disclosure, you may want to ask for it.

*Model Code of Ethics, continued...*

- Misrepresent known facts in any issue involving association business.
- Divulge personal information about any association owner, resident or employee that was obtained in the performance of board duties.
- Make personal attacks on colleagues, staff or residents.
- Harass, threaten or attempt through any means to control or instill fear in any board member, owner, resident, employee or contractor.
- Reveal to any owner, resident or other third party the discussions, decisions and comments made at any meeting of the board.

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## DELEGATION: AN IMPORTANT TOOL FOR THE BOARD

By Matt Ober, Esq.

The amendments to Civil Code Section 1363.05 (a.k.a., the Open Meeting Act) that took effect in January of 2012 are far sweeping in how they change the manner in which boards of directors conduct an association's business. The new law leaves very little breathing room to handle an association's business outside of a properly noticed board meeting, and to deal with these new legal requirements boards must find efficient ways to handle business in between meetings. One such tool is delegation.

The Open Meeting Act allows boards to delegate duties to other persons, including the association's managing agent, officers and committees of the board. As a result, tasks that require action in between board meetings can and should be delegated to officers, executive committees, or management depending on the task and authority required. The delegation should be made in a board meeting and reflected in the minutes (or preferably in a board resolution) that documents the purpose, scope and duration of the delegation.

When delegating to an executive committee of the board, make sure the number of directors does not comprise quorum. Create a charter for the executive committee that identifies such items as the types of matters to be decided by the committee, the length of the committee's

duration (i.e., for a specific project or ongoing). Also, the tasks or decisions delegated to each committee are not already delegated to someone else by contract or the association's governing documents (or are prohibited from being delegated by state statute).

Many boards may now be inclined to delegate more tasks or projects to management. For example, it may be more efficient to set or increase spending authority for managers so that day-to-day maintenance decisions can be made in between board meetings. Both the board and management should review the management contract scope and exclusions for any language that may limit or prevent delegation. Also, verify whether the tasks delegated to management will require additional compensation.

Of course, the act of delegating to management does not absolve the board of the ultimate responsibility for the delegated task or decision. The monthly management report to the board should include a summary of all items delegated with backup for action taken or expenses incurred within the spending authority. Finally, any uncertainty about the appropriateness of any action taken through delegation should be resolved by ratification at the next board meeting.

Delegating tasks to individual directors should not be overlooked. If a board is in agreement on a land-

scape contract but all that remains is flower choice, that decision can be delegated to a member of the board. If a contract has been approved subject to verification of certain items, a decision on those remaining items can be delegated to a director. As with all delegation, the board should be clear to document the issue or task delegated to the director and understand that any further action must be brought to the full board. This protects against the risk that a director may act outside the scope of his/her authority.

It is imperative to inform and educate boards about the new Open Meeting Act requirements and the importance of observing proper corporate process. Further, it is crucial to guard against activities that otherwise might involve a majority of the directors outside a noticed meeting (i.e., group violation inspections), and instead consider well-defined delegation to committees, a director, or management, without specific limits. And, finally, if the board has discovered an inadvertent violation of the Open Meeting Act, the action or decision should be ratified at the next open board meeting, along with an explanation of the circumstances that led to the inadvertent Open Meeting Act violation.

*Matt D. Ober, Esq. is a Senior Partner of Richardson Harman Ober PC, serving community associations throughout Southern California.*

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**★ HOA BOARD MEMBER SEMINAR ★**  
**February 7th, 2013**

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Beven & Brock is pleased to announce that the next free Board member seminar will feature Attorney Kelly Richardson who will be addressing issues related to addressing the challenges of Board service.

Board service is difficult enough, and Mr. Richardson will present information that will help Board members understand the origins of the challenges and propose solutions to eliminate the difficult aspects of the board members job.

Basic attitudes and understandings about volunteer board service can enhance or reduce the amount of stress in serving as a director of your community. Most owners who serve as Board members lack understanding regarding issues such as corporate process, the business judgment rule, and how to avoid liability in their role as volunteer directors.

The attitude and approach of Board members plays a major role in how Board members perceive and operate in their position. This seminar will address the core issues involved. The evening will include a "Lightning Round" of quick tips to streamline and shorten your board meetings.

Join us for a very practical evening. Invest ninety minutes, and learn how board service can be, and should be, SURVIVABLE.

In addition, participants this evening will have the opportunity to discover new service vendors, enjoy great desserts from Corner Bakery, and have the opportunity to win door prizes.

**Make a reservation by calling (626) 795-3282, ext. 886, or by email at "HOAseminars@bevenandbrock.com".**

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