



NEWS AND VIEWS

for Homeowners Associations

HOA BULLIES!

Bullying is a frequent topic in the news today mostly in connection to schools and professional sports. Certainly, while it is seldom mentioned in the media, bullies exist in almost every homeowners association, even the small associations. For some associations, this problem is very significant in that it creates legal expenses, and lowers property values.

The origin of bullies within the Homeowner Association may have roots in the context of the association relationship, or it could originate from some other place that is outside the association. To the extent that the behavior originates from within the association, whether from recent events or something that occurred many years ago, it can be addressed. It may be challenging to address, even daunting, however for the sake of a healthy association and peace in the community, it should be done.

Bullying in an association can be done by an owner, a tenant, and yes, even a board member. Living in an HOA provides great potential for a bully to operate since two issues of great importance to people are involved: homes and money. Another contributing factor is the proximity in which people live.

HOA Bullies! continued on page 3.

2014 - THE YEAR OF IMPLEMENTATION

By Dave Brock, PCAM



It's finally here - when the long awaited and much talked about reorganized law for Common Interest Developments in California takes effect January 1, 2014. A

significant impact for every association will be in the annual distribution of the required disclosures. Annual disclosures are now required to be organized into two distinct packets and there are also some new requirements.

It is best to start early, as some of the items may require time to complete, while others are relatively simple to accomplish. Here are some of the highlights that Associations may not be fully up to speed on:

- 1) Communications from owners: appoint someone to be the recipient of any communication from the owners. Normally, this would be the association manager, but it could also be the President or Secretary. A statement regarding this is to be included in the Annual Policy Statement.
- 2) Posting of General Notices: The board may determine a location on the property where "general notices" can be posted. If there is such a place the location will need to be determined and indicated in the Annual Policy Statement.
- 3) Dispute Resolution Policy:

the board will need to create, approve and distribute or elect to use the default language provided in the law.

4) Architectural Approval Rules: An association shall annually provide its members with notice of any requirements for association approval of physical changes to property. Generally the governing documents while they may contain some references to architectural approvals, are typically vague and unclear. The association must have a policy that addresses the code requirements. A future article will address this topic.

5) Collection policy - This policy describes the associations' practice in the event of default in assessment payments.

6) A statement of fines or penalties for enforcement of the rules, if they exist, must be included.

7) Reserve Disclosures - Since there are thirteen (13) reserve related disclosures, it is strongly advised to retain the services of a Reserve Study professional every year. If you have an ongoing relationship, the Reserve Study professional will greatly assist the Board in completing the disclosures.

We wish you a great 2014 and that your "Year of Implementation" will be smooth.

THE ROLE OF THE TREASURER!

By Dave Brock, PCAM

The role of Treasurer is one of the three critically important roles in any Common Interest Development. The issue of money and finances is of great importance, as it is most commonly the root of disputes and conflict within the association. Due to the important nature of the position, many people assume that only an owner with an extensive financial background must serve in this position, however this is not the case. This article will examine the duties of the Treasurer, as well as explain the qualifications that should be important to any association.

First and foremost, the Treasurer is primarily responsible for the financial affairs of the association. This does not excuse the other board members, however, the duty of the Treasurer is to maintain control over the finances, and report to the board regularly on the status of the association finances.

The reporting by the Treasurer should involve two primary aspects: 1) the status of the receivables, which means the status of any delinquent owners, and 2) a year-to-date assessment of the expenses compared to the forecasted budget for the most recent month end. Fortunately, there are great standardized reports that make this very easy. While there are other aspects to be involved with, these two are of primary importance on a regular monthly

basis.

The Treasurer should verify that the expenses paid are proper expenses, confirming that the service was received and that the service was provided at your association.

The Treasurer should have a basic understanding of the required financial reports and understand how to read them. If a management company is involved with your association, the manager should prepare the reports and provide guidance on how to read them if needed. The reports should not be complicated or difficult to understand. By law, the board must review the *reconciled financial statements* at least quarterly.

The board is responsible to safely invest the reserve funds according to the direction of the board, and transfer to the operating account as they are needed for reserve projects. The Treasurer should see that this occurs. Reserve funds should always be invested in a federally insured account, with the board determining how long the funds should be invested for. Some Treasurers like to shop the interest rates and obtain the highest rate. While this level of involvement is good, it is not essential. The difference of a quarter percent on the rate for \$50,000.00 is only \$125.00 per year. Safety of the association's funds is the only priority.

The Treasurer should be a strong advocate for complying with the legal requirements particularly as it concerns the reserve study and required disclosures. Treasurers should not directly undertake the task of performing the reserve study, annual updates and required disclosures. Instead, the Treasurer should be sure the association has retained proper professionals to be involved in this important process.

The Treasurer works to prepare the proposed annual budget. If there is an Association manager, they would likely do the first draft and then the Treasurer would lead the board in the process of discussion and approval.

One of the qualities of a Treasurer should be a person who always pays their own assessments on time. It would be a conflict of interest for the Treasurer to pay their own assessments late. If this is the case, the board should appoint a different Treasurer.

It is not important that the Treasurer have extensive experience in finance or accounting, although it is helpful. The concepts of HOA accounting are relatively simple and can be easily explained. If you balance your own personal checking account each month, you are likely qualified. At the same time, it is possible for a Treasurer with an extensive financial background to be overqualified and overthink the job.

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HOA Bullies! continued from front page.

We will examine two types of bullies in this article: the *homeowner bully* and the *Board member bully* and provide you with effective strategies in addressing this common challenge.

The Homeowner Bully!

There are multiple ways that the *homeowner bully* can develop with some of the causes being real and some perceived. The most common reasons are a) disagreement with board actions, either with the current board or a previous one, b) a personal dislike of the board or a particular board member, c) a sense of powerlessness, d) feelings of not being heard, e) a distrust of authority or f) a fear of change. When one or more of these issues exist and is combined with an inability to articulate them well, some people will act or react in ways that are aggressive toward the board or others.

What can the board do? The two most common reactions are *flight* or *fight*. Some board members will decide that they didn't sign up for this and will resign. Other board members will choose to fight and may engage the services of an attorney. The latter approach may be very appropriate, especially, if there is a threat of physical harm. While this is an expensive solution, it may be necessary. Another reaction is to ignore the bully, and hope the problem goes away.

Ideally, the best solution may lie

in the middle of these two extremes. Perhaps, the best approach is to engage in "Internal Dispute Resolution" or "IDR" between a designated board member and the bully owner. IDR occurs when a board member meets with the bully owner for a casual conversation in a neutral location. To be effective the conversation should involve the board member listening to the owner and attempting to understand the source of their issues with the board or association. The simple act of listening has the potential of resolving disagreements. You may also find that the feelings are justified, and the board may need to correct how they function. Perhaps, offering an apology over some past issue may help to diffuse the tension. There is no doubt that this approach, if successful, will be more effective over the long term and less costly.

The Board Member Bully!

A board member is in a position of power and this provides a perfect opportunity for bullying to occur. This is true when the board member is inflexible and their position of service has turned into one of power. Sadly, other board members may be reluctant to stand up to the *board member bully* because in their view, it is easier to remain quiet. This is never good for the association as it can empower the *bully board member*.

A situation where there is a board

member operating in a bullying manner is far too common. Apathy on many association boards is a perfect environment for this situation to occur. If board members don't care, and allow one board member to do everything the *board member bully* can develop. It is important for all board members to speak up, even when you want to remain passive. If you are on this kind of a board, you should speak privately to the other board members about your concerns to see if there is any support with the other board members to address this situation.

There are several approaches to addressing a difficult board member and the approach will depend on the severity of the problem. If you believe that the board member is breaking the law, it would be best to consult with an HOA lawyer as to the best way to remove them from the board. Hopefully the scenario is not this bad, and the board member will agree to either to step off the board, if they realize the board is united or at a minimum, the board can vote to remove the board member from the office they are holding. If the President, Secretary or Treasurer is the bully, the board can vote to remove them from their office, but stay on the board. This is a common and fairly uncomplicated solution to this issue.

In summary, no board member should have absolute authority or operate as if they do. Board service is clearly a collaborative process and when the board functions as a team the Association is the ultimate winner, as they should be.

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NEXT FREE HOA BOARD SEMINAR!

March 27, 2014

RULES: LIARS, LAWYERS & LUNACY!

Beven & Brock Property Management Company is pleased to announce the first of the 2014 FREE HOA BOARD MEMBER SEMINAR series. This seminar is provided to board members of all homeowner associations whether or not their association is managed by Beven & Brock. This seminar will be both entertaining and educational as the subject of RULES & RULES ENFORCEMENT will be addressed. Attendees will learn how boards can stay out of hot water when it comes to rules enforcement. Should they enforce? Should they not? How do they keep lawyers out of the out of the process?

Adrian Adams, Esq., our speaker has an amazing ability to educate and entertain through his presentations. With an extensive background in the community association industry, Adrian Adams is one of the leading attorneys in California specializing in common interest developments. Although serving primarily as corporate counsel to boards of directors, Adrian has litigated a wide range of issues through the courts, including the Court of Appeals. At the request of U.C.L.A., Adrian created and taught one of their highest rated Extension courses for ten years, a popular course on "Association Management and Law." In addition to teaching, Adrian has been a panelist in many continuing education programs for other attorneys, has been a guest speaker for the California State Bar, and regularly speaks at industry-related events throughout California.

The seminar is free, and you will also have the opportunity to meet HOA vendors who offer their services to homeowner associations. In addition, there are always great desserts, beverages, and an opportunity to win door prizes. Reservations are required and can be made for this important event by calling (626) 795-3282, ext. 886 or by email at HOASeminars@bevenandbrock.com.

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