



BEVEN & BROCK NEWS AND VIEWS

DAVID BROCK, PCAM



A 60 MINUTE MEETING – REALLY!

Meetings are generally held in disdain, and the longer they are, the more this is true. Since associations are required to have meetings, and since association board members are all volunteers, it is very important to have efficient, productive and hopefully brief meetings. Well run meetings set a positive tone for the operation of an association and might actually cause owners to think about serving on the board.

How can an association board have regular meetings that are completed in 60 minutes? Consider the following ideas.

Much of the success of a
See "A Board" on Page Four

It Can Serve as an 'Insurance Policy'

Don't Delay in Recording Assessment Lien

By Alyssa Klausner, Esq.

One of the good things the legislature has done for California community associations is preserving an association's ability to record an involuntary lien (one that the owner did not directly agree to, and compared to a lien like a trust deed to which the owner had expressly agreed), which "secures" the owner's debt to their homeowners association.

While the recording of a Notice of Delinquent Assessment Lien (the "assessment lien") is not a guarantee of payment, it is the best "insurance policy" an association has, particularly in the current economic environment and the "games" with which some delinquent owners are involved to avoid payment.

For example, if an owner transfers title in their property to someone else before the association records its lien, the association loses the right to record the lien for assessments owed before title transferred.

In addition, if a delinquent owner files for bankruptcy, if the association had recorded a lien on the owner's property prior to the date the delinquent owner filed for bankruptcy, then the association is a secured creditor.

This is important as it means that with a Chapter 13 Plan, the owner must include repayment to the association in the plan if he or she wants to keep the property. Similarly, with a Chapter 7-asset bankruptcy case, a secured creditor is entitled to higher priority to obtain payment than an unsecured creditor (an association that did not record a lien).

A lien recorded on the delinquent owner's property prior to the date of the bankruptcy also enables the association to foreclose on the property for all of the amounts due, not just the post-petition bankruptcy assessments if the delinquent owner is granted discharge in

his or her bankruptcy case (as long as the bankruptcy case is closed, or the automatic bankruptcy stay lifted, and the senior lender has not previously foreclosed).

Further, if a lien has been recorded on the property, then the owner cannot sell the property via a short sale without the association's lien being paid, although in many instances the association will be asked to compromise (discount) the amount owed.

Additionally, if the delinquent owner tries to re-finance the property, before that can close,

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The association will be considered a secured creditor should a bankruptcy be filed

Review Financial Reports

It's Easy to Avoid the Shock of an Unpleasant Surprise

California law requires boards of homeowner associations to review bank reconciliations, budget comparisons and income and expense statements on a quarterly basis at a minimum. However, reviewing financial information only four times a year could be detrimental to the financial health of your association. A more frequent review does not need to take more than 15 minutes a month and can be very beneficial to the association.

The budget comparison report which is used for clients of Beven & Brock is a great report that provides the most answers to the association's financial health and can be read fairly quickly. There are two sides to a financial statement: income and expenses, or receivables and payables. The budget comparison report looks at both sides and each month will let the reader know how you are doing compared to the budget. This is important because this report will allow you to predict the future. No one likes surprises, especially if those surprises involve a special assessment or a budget shortfall.

The most important analysis is to review the year-to-date income and expense numbers compared to the budget for this same point in the year. For example, in

July for a calendar year association, you should look at the June month-end statement and compare that to the budget numbers for the first six months of the year. A good budget comparison report will also provide variances between the two, expressed in both dollar and percentage variances. These variance columns will allow a reader to quickly determine if there are major problems in the future.

First, let's take a look at the income side of the ledger. The first way to realize that your collections are not performing as budgeted is to look at two numbers: the amount collected for the year to date, and the amount budgeted so far for the same point in the year. The report should reflect the difference in both dollar and percentage formats. In order to understand why your actual income is less than the budgeted amount, you will likely need to look at another report, called an aging receivable report, which will identify the amount owed by each owner. It is important that delinquencies be acted on promptly, which in most cases is within 60 days of the delinquency.

Secondly, and just as important, the payable side of the statement must be

closely examined. Due to the typical large number of expense categories, the payables may be a bit more complicated to review, but they are just as important as the receivable side.

Generally, the greatest variation is in the area of maintenance. As this is the most challenging area to forecast, it has the potential of being most overspent. An unexpected plumbing job could cost thousands of dollars. If the maintenance budget is 75 percent spent in the third month of the year, you should be concerned. Hopefully, the predictable expenses such as utilities and contract services are all on track.

Any unusual situation, such as even one delinquency, or a large, unexpected expense, must be brought to the board's attention by the treasurer, ideally at the monthly board meeting. This is part of the treasurer's job. As the board becomes aware of an issue, the best strategy will be to closely monitor the financial reports each month, and begin to think through the options. The options usually consist of borrowing from reserves, or a special assessment. The board, by law, can levy a special assessment for 5 percent of the annual budget without a vote of the owners. Remember that if you do this, the board cannot disclose which owner is delinquent.

It is wise for every board to have one person watching the financial statements closely. This is not a job that should be delegated to the manager, and it doesn't have to be difficult, especially when the reports become understandable. Beven & Brock has recently added a new tutorial section to its web-site to help

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Free Beven & Brock Seminar Will Help Board Members When They Address Major Association Maintenance Issues

Many homeowner associations experience great challenges when faced with major maintenance issues such as roof replacement, water intrusion issues or painting. It can be a time of challenge and conflict as boards need to make decisions which involve the expenditure of significant dollars, and potentially special assessment, which involves a vote of the members.

For these reasons, the next free board member seminar held for Beven & Brock board members will address the issues associated with major maintenance issues.

There are usually additional seats available for board members of associations which are not currently managed by Beven & Brock on a reservation basis. There is no charge to any board members who attend.

Beven & Brock has been offering seminars for about six years, and they have been well received. The next seminar will be held on Oct. 18, 2011, at the University Club of Pasadena, 185 N. Oakland Ave., Pasadena.

As before there will be HOA vendors in attendance who will provide helpful

information about their services. Attendees will have the opportunity to win prizes that are being raffled from the sponsoring vendors.

The speakers at the next seminar will include Matt Ober, Esq. of Richardson and Harman, Timothy Cline from the office of Timothy Cline Insurance Services, Larry Hooper from Banco Popular, and Mark Clonts of National Roofing Consultants, Inc.

Some of the topics that will be addressed are how to obtain truly competitive bids,

finding qualified vendors and understanding how to get the exact amount of work that you need.

Learning how to deal with contractors and understanding the insurance issues involved will be addressed as well. Finally, financing the work whether by reserves, special assessment or borrowing will be discussed.

To attend or for more information e-mail HOAseminars@bevenandbrock.com, or leave a voice message at (626) 795-3282, ext. 886.

Collections Should Begin at the Earliest Possible Time – Review Your Policies

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the lender will usually require the delinquent owner to pay off the association's (earlier) lien so that the association's lien does not hamper the lender's security.

For these reasons, it is important for associations to stay on top of their delinquency reports each month and to record liens with regard to those property(s) which are delinquent in the

payment of their assessments. We recommend that all associations review their required collection policies and consider starting collection at the earliest possible time, no later than 60 to 90 days after the owner becomes delinquent.

Alyssa B. Klausner, Esq. is with the firm of Swedelson & Gottlieb. For questions regarding liens, bankruptcy or collection of delinquent assessments e-mail her at abk@sghoalaw.com.



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A Board President Must Be Focused on His or Her Role

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well-run meeting depends on the president (or chair).

First, respect the time and commitment of your volunteers. This is accomplished by making sure that a board report is in the hands of all board members a few days prior to the meeting. The material must be opened and reviewed in advance of the meeting. The president may need to check in with board members for several months to make sure that the members open and read the material before the meeting. The purpose of a meeting is to make decisions, and valuable meeting time should not be spent getting board members up to speed on an issue.

Treasurer Must Keep Board Well Informed

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board members learn how to read the monthly financial statements. If you are not a “numbers” person, and no one on the board is, be concerned that some unpleasant surprises may be in the future.

The president must be very focused in his or her role, by specifically keeping the discussion on track and not letting issues irrelevant to the current topic get raised. If an issue gets raised that is not on topic, or on the agenda, the president should make a note of it and place it on a future agenda.

Owners may attend and speak, but only during the open forum portion of the meeting. Many associations choose to do this at the beginning of the meeting.

The president should allocate a maximum of three minutes per owner who wishes to address the board. If there are more than three, suggest that the owners in attendance appoint a spokesperson, if the issue is the same for multiple attendees. The board members must not engage the speaker, even if they feel attacked by the remarks being made.

Board members should listen attentively, take notes and thank the speaker for their input. If anything is said by the board members, it should only be to ask questions of clarification. If issues are raised that require follow-up by the board, the president can make a note for

future agendas, or direct that an action of response take place.

At the close of the meeting, ask the secretary to read the minutes back to the members. This should take only about five minutes, and will save much more time later. The secretary should appreciate this as it will make his or her job easier, and you will find that the full approval process of the minutes will take less time later.

The bottom line: respect the time and commitment of your volunteers. And be sure to review in advance or the meeting material that pertains to the decisions to be made.

NEWS & VIEWS

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