



# NEWS AND VIEWS

*for Homeowners Associations*

## DAVID BROCK, PCAM



### NEW POOL SIGNAGE REQUIREMENTS

Spring... it's that time of year when the residents of the association are beginning to think about enjoying the pool, once again. It's also that time of year when Boards think about pool usage and maximizing safety and enjoyment of this important common area. For this reason, Board members should be made aware of recent changes to the California Building Code that occurred late last year without any fanfare.

The major changes that have come into effect are related to important changes in the signage requirements. Whether you have a pool or a spa, the requirements affect all homeowner associations which are considered public pools. Boards are advised to check with their pool/spa maintenance vendor and have them confirm whether or they are in compliance.

The required signs pertain to information about emergency facilities, gate closures, CPR, diarrhea, and other issues. In case your pool vendor is not aware of any changes, you can direct them to [Section 3120B](#) of the California Building Code.

## RULES ABOUT RULES!

The creation of operating rules, sometimes called "Rules and Regulations," is an important function for the HOA Board of Directors and also a challenging process for several reasons. First, there is basic disagreement about the necessity of rules. Some board members feel that having an abundance of rules is best, and some feel that no rules or very few, is the better way to go. The problem with the absence of a rule, once an owner has done something objectionable, is that it leaves the Board with little to nothing they can do to take immediate action concerning the issue at hand. The adoption of a *new rule* takes at least 45 days to become final.

The language in many an association's governing documents can often appear vague and, likely, difficult to enforce. Here's an example of vague language that can be found in one set of governing documents: "no noxious, illegal, offensive activities shall be carried on in any Living Unit, or in any part of the Project, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of Living Units". The issues that many associations face, such as parking, pets, pool usage, and architectural modifications need to be clarified in a far more specific manner in order to be enforceable.

Since the very act of making rules can be contentious, and certainly the enforcement of rules can be even more so, it is necessary that the Board become familiar with the process of creating rules for their association to avoid problems with enforcement later on. The primary goal is to create rules that are both reasonable and enforceable. The law requires that enforceable rules are those that are in writing, and are within the Board's authority. Enforceable rules must also be consistent with the law and the governing documents, adopted in good faith, and be reasonable.

The process involved in the adoption of *new* rules is the same regardless of whether you are adopting a set of rules for the first time or amending existing rules. The first step involves the Board discussing the potential rules at an open meeting. This must be announced on the Agenda and posted in the common area prior to the meeting. A board member may not spontaneously propose a rule(s) at a Board meeting and expect that it can be approved at that meeting. Once properly announced on the Agenda, the Board should deliberate the potential rule(s) and draft the rule(s) in a format that can be approved and enforced.

Once this step is completed, the next step involves the Board providing a written notice of the rule(s) to the owners by first class mail. The notice

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*Rules About Rules, continued...*

must include *the text* of the proposed rule(s) and a description of its purpose and effect. This must be done thirty days prior to the Board officially adopting the new rule(s). This keeps the Board from acting in an overly zealous manner, insuring that owners have the right to speak to the Board prior to adoption. After the thirty day period is over, the Board can then meet to approve the new rule(s). At this meeting, any owner with opinions about the new rule(s) may address their concerns to the Board during the Open Forum portion of the meeting. At this meeting, the Board should listen so that the rule(s) can be discussed after the Open Forum is over. Owners who take the time to attend a Board meeting and speak to a rule(s) change may have good points, and the Board is advised to consider the points made prior to approving the rule(s).

Once the new rule(s) is approved by the Board, the final step in this process is that of distributing the *approved rule(s)* to all owners within 15 days of adoption. This step, as well as the prior step of notifying owners, should be done by First Class mail.

If followed, all of these steps will help to support the Board in the rule(s) enforcement process, as needed in the future. If done correctly, owners will have several opportunities to be aware of this change and make their

voices heard.

The owners have one last say in this process that Board members should be aware of. If five percent or more of the membership object to the rule change, they may demand a membership meeting to vote upon reversal of the rule(s).

The Board also has the authority to approve an "emergency rule" and by-pass this process if a rule is necessary to avoid imminent threat to health, safety, or to avoid substantial economic loss. Such a rule can only be in effect for up to 120 days, and may not be renewed.

In drafting rules, consider writing them in a way that explains the need for the rule. Avoid beginning a rule with the words "Don't" or "Never". For the first sentence of the Rules, consider a statement such as: "The Lazy River Homeowners Association values a high quality of life that includes mutual honor and respect between the Residents and the Board. We believe that property values are best maintained when owners treat shared common areas respectfully as well as their neighbors who live in close proximity". Rules are a form of education and should encourage good behavior and not send the message that there is no fun or enjoyment allowed.

An important aspect of rules is the discipline or "fine policy" which must

be included in your rules in order to have enforceable rules. Without a fine policy the rules are void. Owners should know what the penalty is for each violation. Similar to the rules themselves, the fines should be reasonable and "fit the crime". Excessive charges for minor infractions will likely not be held to be valid by a court if challenged. Many associations adopt an escalating penalty system. Always a good idea—provide for an initial warning, with no penalty. Thereafter, the fine for the 2nd offense may be \$25.00, \$50.00 for the third offense, and \$100.00 for subsequent violations. The goal is to encourage compliance not to increase revenue for the Association. Rules are likely necessary, but should never cause the community to become a place of suspicion and hostility but rather an environment where a strong sense of community is created. The process of developing rules is a balancing act of creating a strong and healthy community while at the same time creating limits on those owners who don't understand condominium living. Homeowners may need to be reminded that they did not purchase a single family home with complete freedom to do as they wish, but a shared community with many benefits and guidelines that create the necessity for "Rules and Regulations" that provide freedom, safety and community.

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## SPECIAL ASSESSMENTS - Are They Really Special?

One of the greatest challenges faced by Homeowner Associations is dealing with special assessments which are necessary if there are inadequate reserves to address major maintenance projects. Clearly, the best solution, over time, is to faithfully conduct a reserve study and comply with the recommendations of the reserve study professional. It is not uncommon for boards, while approving their budget, to cut the reserve contribution thus keeping the dues artificially low. The result of this practice, over years, will likely insure a *special assessment* will be necessary in the future. When that day comes, such as when the roof requires replacement or the wood trim has peeled to a point where it is unsightly and damaged, the Board will be faced with making some difficult decisions.

The Board has a duty to "maintain, protect and enhance" the property. If repairs are not gradually funded over time, it will not only cause a financial earthquake, but it will be unfair to those owners who are there when the repairs become unavoidable.

When the time comes to face reality, the Board must work diligently to accomplish this task successfully. There are multiple steps in the process and each one takes time. The steps involved are as follows: research, board discussion and owner input, financing and voting. Each step should be followed carefully and with full transparency by the Board since the owners will ultimately need to approve the special assessment or loan that is necessary to fund the repairs.

The research stage involves understanding all of the work that needs to take place. The work should be clearly defined, and it may involve more than one specific job. For instance, roofing may require wood replacement, which then requires painting. The Board should consider retaining the use of an independent consultant who can advise them on the work to be done, write specifications, help obtain and review bids, and oversee the work to help ensure a quality job. Utilizing a consultant provides protection for the Board according to the "business judgment rule".

It is essential to know what the entire project will cost prior to putting the issue to a vote of the owners. It takes a great deal of effort to obtain the necessary approval of the owners. It is not good to have to repeat this work because the bid process was not handled appropriately with qualified vendors who are all reviewing the same set of job specifications. The Board must undertake this process in a transparent manner. Boards that rely on executive session meetings tend to create suspicion in the community. In the open Board meetings, the Board should consider all available options and ideas, including the timing of the work which may bring other benefits in terms of financing. Be sure to ask the consultant about unforeseen costs, so that you can anticipate potential costs that could be encountered.

Once the Board has good information about the scope and cost of the

work to be completed, then the Board should discuss how to proceed in an open meeting. It is important that the Board be in agreement as much as possible in this process. Take the time necessary to allow Board members to express their concerns and reservations. Since these discussions will occur in an open meeting, be sure to post this topic on the Agenda and it is posted in a common area location four days prior to the meeting. Owners that attend should express their opinions and the Board should carefully consider and evaluate perspectives and address concerns raised. This process will strengthen your ability to gain ultimate approval from the owners.

The Board's discussion should encompass the following topics: timing of both the job and the need for funds, disruption to common areas, and individual units as well as the qualifications of the various bidders including their work history in similar projects. Also, the consultant should speak to the possibility of cost overruns and the possibility of time delays. A budget should be created for the entire job, which includes potential uncollectable assessments and unforeseen situations. The Board may want to invite a Realtor to come and address the issue of property values with and without the job being completed.

A future article will address the issues of financing and voting, however it is essential that the Board undertake a methodical process of study and serious discussion in the early stages of this process.

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## CALIFORNIA STATE LAW CHANGES COMING IN 2014

For almost thirty years, common interest developments in California have been governed by the “Davis-Stirling Common Interest Development Act”. The Act, which comprised 23 statutes in 1985, now contains over 90 statutes. There have been numerous legislative changes over the years and the legislature now finds that the Act is neither well organized nor easy to use. Last year, Governor Brown signed into law Assembly Bills 805 and 806 which concluded a four year process by the California Law Revision committee’s re-writing of the Act with the goal being that of a simpler, more logical and user friendly Act. The result is that AB 805 relocates the Act to a different part of the California Civil Code and AB 806 updates the many references to the Act in other California statutes to reflect the new statute numbers.

There are two types of changes to the Act that are important to understand. The first type of changes are reorganizational in nature, and the second type are substantive changes to the Act, and are considered to be noncontroversial.

The reorganizational changes include several intended improvements that include the grouping of related code sections into logical order and breaking up longer code sections into shorter sections. In addition, the Commission separated code sections to make them easier to read and clarified unclear and confusing sections. For instance, there is now a section that groups together all property usage and maintenance topics. The Act’s section on definitions has been expanded to incorporate existing definitions from other sections.

The substantive changes affect the annual disclosure requirements by creating two disclosure documents: the “Annual Budget Report” and the “Annual Policy Statement”. Other changes address conflicts of interest pertaining to board members, notice requirements between owners and the Association, and other changes.

Future issues and our next seminar will address these items in greater detail. The next Beven & Brock free Board member seminar will be held on **October 15th, 2013** in Pasadena. This speakers at this seminar will be two Homeowner Association lawyers, Sandra Gottlieb and Brian Moreno. You may register to attend by calling: (626)795-3283, ext. 886, or by email at: [HOASeminars@bevenandbrock.com](mailto:HOASeminars@bevenandbrock.com). The new law will take effect January 1, 2014, so it is best to get up to speed sooner than later.



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