

BEVEN & BROCK

NEWS AND VIEWS

DAVID BROCK, PCAM



12 HOA NEW YEAR'S RESOLUTIONS

While some people see the beginning of the New Year as a time to make changes in their personal lives, it can be a great time to resolve as a board to implement changes and improvements in your homeowners association. Consider the following ideas as possible board resolutions for the New Year.

Architectural Rules - Because associations are responsible for the common areas and because CC&Rs prohibit alterations to the common areas without prior approval of the board of directors or an architectural committee, boards should adopt written architectural guidelines. They can be incorporated into the Rules and Regulations or be stand-alone architectural standards. Items to be considered can include:

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Several Requirements You Need to Know

New HOA Laws Take Effect in 2012

By Kelly Richardson, Esq. and
Matt Ober, Esq.

SB 563: Board Meetings

Effective January 1, 2012, this amends the "Open Meeting Act" (Section 1363.05).

- Executive Session Meeting Notice and Agenda: Boards must give members two days notice of a meeting which is solely executive session. Executive session meeting agendas are also included as "association records" that a member can see.
- Emergency Decisions: The board may make an emergency decision by electronic mail if all directors consent in writing and the written consents are filed with the meeting's minutes. Written consent may be by email as well.
- Board Action Outside of a Meeting Prohibited: The other significant change in the deletion of the power of a board to make a decision outside a meeting by unanimous written consent. Meeting by e-mail (outside of emergencies) is also expressly banned.
- Meetings Using Speakerphone: This amendment to the Open Meeting Act expressly allows a board to conduct meetings with directors participating by speakerphone. However, this procedure was already in the Corporations Code, and so is not new, but easier now for associations to find. There still must be some physical location where members can attend and participate and where at least one board member must be present.

What this means to you: One board power was taken away, and another power added. Boards

need to respect the importance of making decisions in the open.

AB 771: Transfer Fee Disclosure

This amends existing Civil Code Section 1368 and adds new section 1368.2 relating to disclosures upon sale or transfer of property.

Civil Code Section 1368 requires the association provide a requesting owner certain documents within 10 days. These documents must then be provided to a prospective purchaser.

Now, added to the list of required disclosures are copies of the last twelve open board meetings and a disclosure if there is a leasing restriction. An owner may designate a third party (i.e. prospective purchaser or agent) to receive the documents within 10 days of the owner's written request.

The new law also closes a loophole in previous law limiting association charges to "actual" reasonable cost. Management firms had been deemed by the appellate courts to not be bound by the "actual cost" limitation, but now will be limited to a "reasonable" charge for the documents.

This will not affect most management firms already charging reasonable fees for the cost of producing the many disclosures required by law, but all will now be required to have a price list for the various disclosure documents. The association cannot charge additional fees for electronic delivery of the documents. Finally, the new law specifies that documents cannot be withheld for any reason other than failure to pay

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A Dozen Important Suggestions

Resolutions to Help Your HOA Have a Happy New Year

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- Establishing acoustical standards for items such as hard surfaced flooring.
- Standards for plumbing fixtures.
- Submittal of plans for major remodels. Consider adopting a remodeling agreement. The agreement is signed by the owner and describes the scope of work. It limits the owner to the work approved by the board and makes the owner responsible for any damage to common areas. Agreements should require the use of licensed and insured contractors, building permits, a deadline for completion of construction and an indemnity provision. Additionally, agreements can include restricting work on holidays and weekends as well as defining hours when work may occur.
- Planned developments should have written standards for paint colors, roofing materials, fencing and landscaping.

Election Rules - A 2006 law required that homeowner associations adopt election rules that govern the election of directors, removal of directors, special assessments, amendments to the CC&Rs and Bylaws, and grants of exclusive use common areas. The law requires that elections must be by secret written ballot (a two envelope procedure) and involve an independent election inspector. The election rules address

nomination procedures, candidate qualifications, methods of selecting independent third parties as inspectors of election, and access to association media and common area meeting space during campaigns.

ADR & IDR - Associations must provide a "fair, reasonable and expeditious" procedure for resolving disputes between the association and its members without charging a fee to the member participating in the process. The processes are Alternative Dispute Resolution (ADR) and Internal Dispute Resolution (IDR) or "Meet and Confer." If an association does not establish its own procedures, then there are procedures that automatically apply. A successfully implemented IDR can save legal costs and promote harmony.

Reserve Studies - The purpose of the reserve study is to provide information regarding how much money the association should have in reserves for major replacements. A reserve study is required every three years with updates required annually. There is no simple formula to determine this. It is mandatory for the board to disclose to the owners each year certain aspects of the reserve study. Included in this disclosure are the answers to seven questions which can be prepared by a professional reserve study preparer. If a major replacement occurs and the proper disclosures were not provided, it

is possible an owner could have a basis to challenge a future special assessment.

Rules and Regulations - Written rules and regulations with enforcement provisions such as fines are a proactive approach to having to handle problem areas such as parking, noise, pets, storage in exclusive common areas, pool usage, etc. While CC&Rs may touch on these type issues the CC&Rs can be vague, and they often don't carry enforcement provisions. Be sure to comply with the law in the process of adopting rules and regulations.

Maintenance Responsibility - One of the most complicated aspects of operating an association has to do with distinguishing responsibilities between the association and individual owners on some maintenance items. Some of the complicated areas are maintenance of balconies, plumbing, window and sliding glass door leaks, and air conditioning lines. Rather than paying for a legal opinion each time an issue comes up, create a maintenance responsibility chart that answers all of the complicated issues at once. This requires a review of the governing documents as well as applicable civil code requirements.

Meetings - Hold regular meetings in person in compliance with the new 2012 law. Listen to owners during the Open Forum portion of the meeting. Consider adopting a procedure that sets out how board meetings are conducted and that offers direction on how the Open Forum is handled. A written procedure will help to support the board in conducting meetings in a civil and business-like manner. As problems develop, the board can use the established rules to restore order in their dealings.

Collection Policy - Associations must disclose their policies and practices in enforcing lien rights and other legal remedies for collecting delinquent assessments. The

See "12 Good Ways" on Page Four

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Changes for 2012 and Beyond

The State – and Pasadena – Add New Requirements

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fees allowed for providing the requested documents.

What this means to you: This will not make any major change for associations who are already well and professionally managed.

SB 150: Leasing Prohibitions

Adds new Civil Code Section 1360.2 and makes three changes:

- Leasing limitations or prohibitions recorded on or after January 1, 2012 will only apply to new owners taking title after that date or to owners voluntarily accepting the applicability;
- The association must add to its Civil Code 1368 disclosures if there is a limitation or prohibition on rentals;
- Prior to leasing, landlords must provide the association the date they acquired ownership and the name and contact information for the tenant.

The net effect of this legislation is that for a lease prohibition in a governing document to apply to any owner, it must have been in effect prior to that owner acquiring title to their separate interest. This law does not apply to commercial common interest developments.

What this means to you: Associations can still “regulate” leasing, but rental maximums bans will take years before member

turnover renders it meaningful.

SB 209: Electric Vehicle Charging Stations

The intent of this bill was to remove obstacles to the use of electric vehicle charging stations (EVCS), which SB 209 does by creating a new Civil Code Section 1353.9.

This law bans any governing document provision which effectively prohibits or unreasonably restricts EVCS installation. “Reasonable” restrictions, defined as those that do not significantly cost or decrease efficiency or performance of the EVCS, are permissible.

SB 209 requires the association to process EVCS applications as any other architectural review application, but within 60 days, or it will be deemed approved (unless required information is not provided by the applicant).

Associations must approve the EVCS installation if the owner agrees in writing to:

- Follow the association’s architectural standards;
- Use a licensed contractor;
- Provide within 14 days of approval a certificate of insurance naming the association as additional insured;
- Pay for electricity.

The owner installing the EVCS is responsible for:

- Any cost of damage to the EVCS, the common area, exclusive use, or adjacent separate interests;
- The costs of EVCS maintenance, removal, repair, and replacement;
- The costs of electricity.
- Maintaining \$1 million insurance liability coverage.

Willful violations may subject an association to a \$1,000 civil penalty, actual damages and attorney fees.

What this means to you: EVCS installation will be expensive, complicated, and it is not expected that many will try to do so.

Pasadena ONLY Smoking Ordinance

Effective 8/13/2011, smoking is prohibited in outdoor common areas of multi-unit housing, such as courtyards, swimming pools, parking garages, recreation rooms, laundry areas, community rooms, playgrounds, etc.

The City of Pasadena passed an ordinance, taking effect on January 1, 2013, banning smoking in multi-unit housing. The association has no responsibility to enforce the ban, which is enforced by the City Health Department. However, multi-unit buildings (including condominiums) must by January 1, 2012 post “No Smoking” signs. Any lease or sales agreement of a residence in a multi-unit structure must disclose the ordinance.



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12 Good Ways to Start Your Association's New Year

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policy must be annually delivered to the members not less than 30 days or more than 90 days immediately preceding the beginning of the association's fiscal year. The policy must include the association's policy for payment plans, imposing late charges and interest, the owner's right to dispute the delinquency, the right to internal dispute resolution, and the right to request alternative dispute resolution. Unless there is an approved collection policy in place, an association cannot enforce its collection rights against a delinquent owner.

Insurance - Annual meetings with the association's insurance agent to review

FREE SEMINAR

The next free board seminar focus on the new laws taking effect in 2012, and will feature two top HOA lawyers. Sandra Gottlieb, Esq. of Swedelson Gottlieb and Kelly Richardson, Esq. of Richardson Harman Ober will be the featured speakers for this event. The event is co-sponsored by many association vendors who provide their services to associations and will offer free drawings.

The February 7 event will be held in northeast Pasadena. For details and to register, email HOASeminars@bevenandbrock.com, or call 626 795-3282, ext. 886.

the association policies and whether the association is adequately insured is time well spent. The agent should respond to questions regarding any gaps that may exist in the association's coverage and whether the insurance policy is in compliance with the requirements in the association's governing documents. Consideration should be given to the adoption of a "Deductible Policy" that indicates how the association's deductible will be paid when there are claims that are related to individual units.

Workers Compensation Insurance - Several recent court cases have held associations are responsible for uninsured and unlicensed contractors. It is not uncommon for an association to have an unlicensed and uninsured person working for the association at some point, despite best intentions. This relatively inexpensive policy offers great protection for the board and the association well beyond the cost of the premium.

Earthquake Insurance - Obtain a quote for earthquake insurance if the association does not currently have it, and survey all the owners in a written format as to whether the association should purchase that coverage. Record the results of the survey in the minutes.

Policy Governance - Policy governance is the process of creating policies that

address as many issues as possible so that the professional service providers have a board-specified framework within which to operate. This allows vendors (manager, landscaper, etc.) the ability to handle day-to-day decisions without direct board involvement while still complying within the objectives of the board. Some examples of this would be decisions related to regularly scheduled maintenance items and some financial items.

While this newsletter does not permit a full explanation of each of these "resolutions", if you would like more information on any of them, consult your attorney or association manager for more information about how to implement them.

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NEWS & VIEWS

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