



NEWS AND VIEWS

for Homeowners Associations

DAVID BROCK, PCAM



LEGISLATIVE HOPE FOR HOA DELINQUENCY ISSUES

Most associations struggle with collection and delinquency issues and it appears this issue will continue to be a challenging problem. The issue of how to deal with owners who do not pay their assessments has dominated the discussion among HOA professionals at a recent Legislative Day in Sacramento, and on the national scene at the recent Community Associations Institute (CAI) conference in May of this year. CAI has introduced Assembly Bill 2273 (AB2273) in Sacramento and I have met with our lobbyist there, as well as my...
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Why Contribute to Reserves?

By Robert M. Nordlund, PE, RS
Associations Reserves, Inc. www.ReserveStudy.com

Board members and Managers often get themselves into a situation where they need to “sell” the value of regular Reserve contributions to their homeowners. It’s often a simple matter of fighting for budget dollars... Reserve contributions don’t keep the lights on, they don’t keep the Association properly insured, and they don’t pay the Management company’s bill. They are often perceived as funds for “far out in the future, when I might not live there”. So what are the main arguments to incorporate regular Reserve Contributions into the budget?

- **Fairness.** While the repair or replacement expense of a Reserve component may only occur every few years, the deterioration that causes the expense happens every day. An expensive roofing project is the culmination of years of advance warning and daily deterioration. Each day brought the association a little bit closer to that roofing expense! It is not fair to enjoy years of service of a watertight roof (or good paint, or smooth asphalt, or a functioning elevator) without setting aside funds to cover the ongoing deterioration of that asset. Future owners should not be forced to pay for something current owners “used up”.
- **Responsibility.** The primary job of a Board member is to maintain and protect the assets of the corporation. With deterioration occurring on a daily

basis, the corporation’s assets are dropping in value if offsetting contributions to Reserves are not being set aside. Board members expose themselves to serious liability when they fail to act in the Association’s best interests.

- **Investment.** One of the fundamental investment rules is to “pay yourself first”, meaning to make it a priority to set aside a small amount of savings on an ongoing basis. This applies directly to Reserves. Adequate Reserve contributions are generally not a substantial amount of cash. They amount to just a few dollars a day per unit, typically less than a premium coffee. But accumulating month after month, year after year, with compounding interest earnings, they grow big enough to pay for the Association’s major repair and replacement expenses in a timely manner. And this is not money that is “spent and gone”. Reserve expenditures support your own property values. And some projects, like exterior repaint, are estimated to improve home value by one to three times the cost of the project! Missing an opportunity to maximize your home value through timely Reserve projects is just plain foolish.

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What Do Directors Need to Know?

By Matthew Gardner, Esq.

Let's imagine that you are one of those dedicated individuals that care about your community and want to help it improve (the chances are very good if you are taking the time to read this magazine). You realize that the best way to serve is to volunteer your time and effort to meet the needs of your homeowner's association. You see the request from your association for nominations, suffer through a contentious campaign, and prevail to become an elected director on your association's board. After a brief celebration with your friends and neighbors, you realize something. Now what?

It is not enough to have the drive and desire to be a director on your Board. You need the skills and the knowledge to make the right decisions and avoid the wrong ones. So where do you start?

Governing Documents:

The first step should be looking at the association's governing documents (Articles, CC&Rs, Bylaws and Rules). These documents are the essential elements of successful management.

The CC&Rs will lay out the major maintenance responsibilities and duties of the association: assessments, collections, common area, etc. The Bylaws will give the board a roadmap on how to administer and govern consistent with its corporate duties: meetings, notice, minutes, elections, etc. The Rules will specify how the board can approach day-to-day living and enforcement of association authority: common area use, discipline, etc.

Every association will have different needs and duties that should be laid out in your documents, so it is not enough to know generally what information is located where. A director must be familiar with these

documents before he or she can effectively carry out those duties.

Davis-Stirling Act:

The second major source of information will be California state law. For homeowners and associations, that means the Civil Code beginning with Section 1350, otherwise known as the Davis-Stirling Act. This body of law will enhance, and in some cases substitute, the director's duties and authority under the governing documents.

As an example, changes that affect every board and association would be in Senate Bill 563. One provision prohibits boards from making decisions by email, unless in cases of emergencies. Another requires additional notice for executive sessions. If you are not up on these changes, the board's authority to act or enforce could be called into question.

The law is updated regularly, so a good director will find a way to stay on top of the changes. Sometimes that means making changes to their governing documents that no longer reflect the law. Sometimes it means finding someone who can help you navigate the changes.

Industry Groups and Vendors:

In essence, associations are their own communities with varied needs. To be a successful director, you need to be able to handle a wide variety of issues with competence. As volunteers, that means relying on professionals for input and guidance.

Being a member of a group like CAI can be a valuable resource for information. Not only does membership give you access to vendors suited directly to your communities' needs, it also provides regular valuable tools and education. Everything from monthly luncheons dedicated to relevant topics facing associations, to links to most recent legislation, to

mediation services, to workshops for new Boards to cover all of the above. A quick search can provide the answers to many of the questions facing new directors. Visit the website to find the latest at: www.cai-glac.org.

While the directors make the final decision, an informed decision should be based on acquiring the basic knowledge from qualified professionals: managers, attorneys, vendors, etc. Taking the time to learn more from the dedicated professionals serving your community could save you time and headaches.

Homeowners:

Finally, new directors should keep in mind the most important aspect of their job; their neighbors.

The most valuable assets of an Association are its homeowners. Directors who can utilize their homeowners while conducting business will find their duties easier to fulfill.

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Legislative Hope For HOA Delinquency Issues, continued...

... Assemblyman, and Senator to encourage their vote in favor. AB 2273 would require that in the case of foreclosure sales, the sale MUST be recorded within 30 days or the acquiring owner will be obligated to pay all outstanding HOA lien amounts in order to maintain the property and to avoid forcing the remaining owners to pay extra to make up for the seller's debt.

Earlier this year a survey was made of 125 HOA management companies statewide and thousands of HOA's were included in the results. The results of the survey will greatly help in understanding the seriousness of this situation. Here are some facts to consider:

- Half of HOA's surveyed had delinquencies of up to 10%. 46% of those surveyed experienced delinquency rates of between 11% and 30%.

- 97% of delinquent assessments are more than 30 days late. 73% are more than 91 days late.

- 49% of all CID (common interest development) sales in 2011 were due to foreclosure or short sales.

- 75% of the time a lender will not foreclose when an owner vacates.

- 60% of the time foreclosure sales were not timely recorded by the foreclosing party. In other words, for strategic reasons that only benefit the new owner, there is a failure to promptly record the sale deed. This severely limits the Association in their ability to collect assessments from the new owner.

- 73% of delayed foreclosure recordings were delayed more than 60 days, and 23% of delayed foreclosure recordings were delayed more than 6 months.

- 76% of the time, assessments are not paid until more than 60 days after the sale.

See the "Legislative corner" in future newsletters for more information on this and other important proposed legislation which impacts you both as a Board member and a homeowner. Your support will be needed and we want your voice to be heard in Sacramento. We will follow the progress on this important bill, and will let you know as your support is needed. To gain your help quickly, we would love to have your email address so that we can notify you quickly. If you think we may not have your email address, please send it to: **HOANewsletter@bevenandbrock.com**. You may also receive this newsletter by email as well if you prefer. Your email will only be used for this newsletter and legislative updates.

Why Contribute to Reserves? continued...

- **Legislative Requirements.** Most Governing Documents give Board members the responsibility to collect an appropriate amount of Reserves to maintain the common areas. Thirty states now have some form of Reserve funding legislation. At this time, California does not have a funding requirement, however there is a requirement to obtain or update your Reserve Study every year. There are many Reserve Study companies, and there is even a Web-based free option.

For more information including a list of providers, please contact us at: **"HOANewsletter@bevenandbrock.com"** It is not too early now to be thinking about the reserve study for 2013, as the results of that study will be required to be included with the budget and disclosure package to all owners in November for calendar year associations.

Robert Nordlund is the Founder and CEO of Association Reserves, Inc. and is a nationally recognized leader in the Reserve Study industry. He can be contacted at rnordlund@reservestudy.com.

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What Do Directors Need to Know? continued...

Remember that the primary duty that directors must fulfill is taking action in the best interest of the association and its homeowners. The most that a new director can hope for is an informed and interested community. When directors engage their homeowners, they will find extremely valuable resources. Directors that ignore their homeowners

will find themselves the object of suspicion and mistrust. Don't forget that the law requires associations to receive and consider input from the homeowners; requires financial and informative disclosures; and requires regular open board meetings to conduct business. Boards that do not meet these basic obligations will not only be in conflict with the law, but

will also be in danger of misusing their home-owners' willingness to participate in serving their community.

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★ FREE HOA BOARD MEMBER SEMINARS ★

Beven & Brock has been providing **FREE SEMINARS** for Homeowner association Board members since 2005. The seminar, held twice a year, is available to Board members of all associations regardless of whether they are managed currently by Beven & Brock or not. The next seminar will be held on October 11, 2012 in Pasadena, at the First Church of The Nazarene. Reservations are required. The topic of the next seminar will be "CONFLICT MANAGEMENT in HOA's". The featured speakers will be attorney Matt Ober, of Richardson Harman Ober, PC; and Anthony Matthews, a court appointed mediator. To register for the upcoming seminar, you may call: (626) 795-3282, Ext. 886; or by email at: HOASeminars@bevenandbrock.com.