

NEWS AND VIEWS*for Homeowners Associations***2015 LEGISLATIVE UPDATE**

BY DAVE BROCK, PCAM

Every year brings new laws to Common Interest Developments, and 2015 will welcome in a few laws that fortunately will not have a dramatic impact. After 2014, in which we all survived the transition to the newly revised Davis-Stirling Act, a quiet year is a welcome relief.



The laws which will take effect that will have the greatest level of interest with HOA boards and owners involve drought and water issues, solar, and IDR (Internal Dispute Resolution).

Several new laws this year pertain to the drought and water restrictions, since California is considered to be in a state of emergency. Effective, January 1, 2015, Associations are prohibited from imposing a fine against an owner for reducing or eliminating watering of their vegetation or lawns. While lawn and vegetative growth may turn brown, the landscaped areas still need to be properly cared for. Further, associations cannot prohibit the use of drought tolerant plants in owner's private gardens and patios. Finally, associations, cannot require an owner to keep a lawn if they wish to change to low water landscaping.

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**HOA BOARD QUICK TUTORIAL**

Following is a quick summary of the important aspects of serving as Board member of your HOA.

**OPERATING AS A BOARD MEMBER**

- 1) Learn to think like a Board member: as a Board member you are a fiduciary, which requires thinking and deciding issues on behalf of what is best for the entire association. This may conflict with your personal preferences at times, but operating this way is required.
- 2) Volunteers - As a volunteer, you should only do what is required, and not act like you are the "onsite manager" which entails daily involvement potentially.
- 3) Team work: as a Board member, you don't carry the burden alone. Decisions should be made in the context of the team (i.e. Board) and never less than that. Insist on a full and active board.
- 4) Board roles: every board member should have a specific job to do, and be accountable to the rest of the board. The role of Secretary and Treasurer are clear as to their roles, however the other positions can fill a variety of important tasks: maintenance liaison, community relations, management liaison,
- 5) Decisions - make them ONLY at meetings, not by email or casual conversation. Decide as much by "policy" as possible, so that you only have to make the decision once, and your manager can carry out the policy.

**MEETINGS**

- 1) Have them on a regular basis, same date, time and place and have 4-10 a year, subject to your by-laws. Meetings should not last more than 60-90 minutes. This will encourage attendance.
- 2) Preparation: every board should have material in advance of the meeting and review it, so that the meetings can be about brief discussion and a decision. Come to meetings with an objective mind, ready to consider all sides of an issue prior to voting.
- 3) Agenda and minutes: this doesn't have to be complicated. The Secretary is responsible for preparation and the Beven & Brock web-site has templates for both. Minutes are to be brief, not a narrative. The Agenda must be posted in the common area four days prior to the meeting. Minutes to be available to owners 30 days after the meeting.
- 4) Communicate the action list from the meeting to the manager as soon as possible after the meeting if the manager does not attend.
- 5) Open Forum - a portion of every open meeting where owners can address the Board for a specified period (i.e. 3-5 minutes). It is required, and the Board doesn't have to respond to the owner.
- 6) Executive Session - a meeting where the board can meet privately, however should not be over used, it is only for specified

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**HOA BOARD QUICK TUTORIAL:**  
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purposes: contract negotiation, member disciplinary hearing, and litigation. Do as much in the open as possible.

**FINANCIAL**

1) Review monthly financials promptly. Most important items: owner delinquencies, and budget comparison report. Treasurer should lead the way in this, and the Beven & Brock web-site has a tutorial.

2) Be consistent with collections - treat every owner the same, even if they are on the Board.

3) Reserves: engage a professional to obtain/update the study annually and complete the required annual disclosures.

4) Follow the recommendations of the reserve study, but if you choose not to, at a minimum fund the reserves at 10% of the budget. This is required by lenders.

**MAINTENANCE**

1) All vendors should have license and insurance (liability and workers comp, if they have employees). A W-9 form is also required.

2) Develop trusted vendor relationships so that obtaining bids for routine jobs are not always necessary.

3) Avoid using vendors where Board members have a conflict of interest.

4) For major work such as roofing, water intrusion or painting, utilize a consultant to avoid liability.

5) For other work, the Board or a objective and knowledgeable consultant should prepare a job

scope, or specifications, such that the manager can obtain comparable bids.

6) For emergencies, manager has the ability to approve work regardless of cost. Board may specify a liaison to discuss with manager.

7) Small jobs (routine) under \$500.00, should be able to be approved by manager without entire Board involvement.

**MANAGEMENT**

1) Your manager is highly qualified, certified, and has many years of experience. Allow them to handle issues for the Board, without Board oversight between meetings except as manager may require to clarify an issue with a single board member between meetings.

2) The manager will provide a management report a few days prior to the Board meeting updating the board on all pending issues, and informing the Board of new issues that have come up between meetings. The manager should not be expected to update Board members between meetings, except for emergency situations as determined by the manager.

3) The Board should advise the manager immediately after each meeting as to the action items that require attention between meetings.

**COMMUNITY**

1) Find ways to engage the owners, such as a summer BBQ, community yard sales, or Holiday events. This increases community

and helps to fight apathy which is a big problem in many associations.

2) Welcome new owners and make personal contact with them.

3) Be reasonable and sensitive to owners in developing and enforcing rules.

4) Violations and rules enforcement: allow the manager to guide you. Different issues require different approaches for resolution.

**INSURANCE**

1) Invite your insurance agent to a Board meeting once a year to review the policy and confirm that you have appropriate coverages in place.

2) It is advisable to carry Worker's Comp coverage, even though you don't have employees, since the determination of employees is very broad and your understanding of an employee may differ from the legal definition.

Thank you for serving your community. Beven and Brock is here as a resource for you and your Board.

**HOLD THE DATE!**

Upcoming Seminar!

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## MANAGER CERTIFICATION: THE ANNUAL DISCLOSURE

BY DAVE BROCK, PCAM

Certification of CID Managers has been a law now for over almost 12 years. The intended purpose of the law is "DISCLOSURE". Boards should know if the management company they are hiring (or has hired) has certified managers on their staff. Surprisingly, there is no requirement that CID managers be certified however the law requires that managers or management companies disclose that they are certified (or not) prior to entering a contract and annually thereafter.

Given the fact that for most people, their home represents their most important financial asset, it would make sense to not allow your investment to be managed by a manager who is not certified. This is why the California legislature made this disclosure law a reality in 2003.

Boards should find out if the property supervisors (or managers) are certified, and additionally if the company is insured. Boards should look for professional designations when hiring a manager. Working with a Certified manager affords the best protection for associations as knowledgeable and certified managers help steer their associations through the maze of regulatory compliance thereby reducing potential liability and making it easier for volunteer directors to meet their fiduciary duties.

What does Certification involve? To become a certified manager the process takes about two years or longer depending on

the designation, to complete the required courses and receive the experience necessary to become approved. There are continuing educational requirements as well, and re-certification must be completed every three years. Certification indicates that a manager has achieved certain levels of training in the management of common interest developments.

On a practical level, a manager who makes the investment of time and money to become certified is clearly committed to this industry and has plans to stay in this industry for an extended period of time. This isn't a career that they are trying out to see if it works. Managers who are in this industry for the long term are the kind of managers that you want to have working for you, and not someone who has applied for a position because of an economic downturn in another field.

Certified managers will work harder for their Association clients as they value their reputation and they don't intend on changing careers. A requirement of Certification is membership in a industry related trade organization, of which there are two: the California Association of Community Managers (CACM) and the Community Associations Institute (CAI). CACM is a California specific organization and CAI is a national level organization with many chapters around the country. Both organizations have "codes of ethics" and "standards of practice".

By way of disclosure all but one of the Beven & Brock Association Managers, and Principals of the firm are Certified common interest development managers. Each of the following have met the requirements of the Business and Professions code, section 11502.

The following managers are certifications are current and are certified by CACM, which is located at 23461 So. Pointe Dr., Ste 200, Laguna Hills, CA 92653. The phone number is (949) 916-2226.

All of the names listed below have been actively managing associations prior to the dates indicated, but have been certified with CACM from these dates until now.

- C. Finley Beven, since 1994, status is Emeritus
- Vianna Boettcher, since 2006
- Paul Cannings, since 2003
- Roman Esparza, since 2009
- Juanita Flores, since 2004
- Laura Garbo, since 2003
- Lori Lacher, since 2003
- Sue Threadgill, since 2003.

The following managers are certified with the Community Associations Institute, located at 6402 Arlington Blvd., Suite 500, Falls Church, VA 22042; Phone: (703) 970-9220, and they are current:

- David Brock, PCAM designation, since 1990.
- Marilyn Howald, CMCA designation through the

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An association's ability to restrict the installation of solar systems has been limited. First, there cannot be a rule or language in the governing documents that prohibits or restricts the installation or use of a solar energy system. Associations can only place reasonable restrictions on solar energy systems and those restrictions cannot significantly increase the cost of the system or significantly decrease its efficiency. The timeframe for an association to approve the system has been shortened to 45 days, from 60 days. If it is not approved within 45 days by the Board, it is deemed automatically approved. Associations are advised to retain the services of a solar consultant to deal with these types of requests.

Finally, the law has been changed regarding "Internal Dispute Resolution" or IDR which will have a major impact on how

IDR is handled. IDR was a great concept, although not practiced often, where one board member is designated to meet with an owner privately in an effort to work through an issue informally. This approach was viewed as a way of economically and efficiently resolving issues by having a conversation. In theory it seemed like a great concept. Now the law has been changed such that either the association or the owner can have their attorney present at the IDR meeting. In light of this change, associations are now being encouraged to revise their IDR rules to require that either party must notify the other in advance (i.e. 10 days) if they are bringing their attorney to the meeting.

If you have interest in knowing more information about these laws, or tracking future laws in process, you may go to these web-sites: "leginfo.legislature.ca.gov", or www.CAcalif.org.

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National Board of Certification, since 1996.

- Erik Mendez, PCAM designation, since 2012.

Beven & Brock currently has one manager who is not certified. Tricia Ford joined Beven & Brock in mid-2014 and has been managing associations since 2003. Tricia earned the CMCA credential in September of 2004, however it lapsed. Since manager certification is an internal requirement of Beven & Brock, she is in the process of re-obtaining certification status.

The location of the manager's primary office is 99 S. Lake, Suite 100, Pasadena, CA. 91101.

If your Association is managed by another firm and you have not received the annual disclosure, you may want to ask for it.

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