



# BEVEN & BROCK

## NEWS & VIEWS

for Homeowner Associations

January 2017

### MANAGER CERTIFICATION: The Annual Disclosure

By David Brock, PCAM

Certification of CID Managers has been a law now for 13 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 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 know if their property supervisor (or manager) is 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



### NEXT FREE HOA BOARD SEMINAR!

## "SEX, DRUGS and RENTALS!"

February 23, 2017  
6:30 PM

Every year the California legislature passes new laws and generally there are a few that impact common interest developments each year. 2017 is no exception. The annual Beven & Brock legal update seminar will occur on February 23, 2017 to learn about the new laws, and regulations that just took effect. The featured speakers will be attorney Kelly Richardson, who is the current national President of the Community Association Institute, along with David Brock who will provide the management perspective.

For a brief review of one of the new laws see the article in this newsletter on Senate Bill 918. No new law impacting homeowner associations makes your life any easier since a new burden is added with each new law.

The seminars that are offered by Beven & Brock are intended to explain the new laws and offer direction as to how to comply with them in the most sensible way. As board members of your HOA it is important that you are aware of new laws, even though you may have a management company working with you.

In addition to the new laws for 2017 that will be discussed at the seminar on February 23, 2017, the presentation will also feature other topics that cause concern among Common-Interest-Development board members, such as rentals, both long term and short term, and how to deal with tenants.

As usual, there will be many wonderful items to be raffled, as well as great refreshments. It's all free.

Registration is simple:

- 1) Call: (626) 795- 3282, ext. 886
- 2) Email: HOASeminars@bevenandbrock.com

When calling or emailing, leave the following information:

- 1) Your name
- 2) Name of your association
- 3) Number of guests, including yourself
- 4) Your best contact information to confirm, preferably, email.

MANAGER CERTIFICATION: continued  
on page 6.

HOMEOWNER ASSOCIATION NEWSLETTER

# ASSOCIATION MANAGER APPOINTMENT

Beven & Brock is pleased to announce the appointment of a new Association Manager.

Angela Nazari has joined the team of Association Managers at Beven & Brock as of December 1, 2016. Ms. Nazari is a Pasadena resident, and a Certified Manager of Community Associations (CMCA), by The Community Association

Managers International Certification Board. Prior to joining Beven & Brock, Ms. Nazari has worked as a portfolio manager at several property management companies in California and Hawaii since 2006.

We are pleased to welcome her to Beven & Brock and we know that her Certification and prior experience will be major factors

in her success and future at Beven & Brock.

Congratulations, and Welcome, Angela!



## What Happened To Our Front Porch?

By M.J. Stevens

**Imagine** what our real **Neighborhoods** would be like if each of us offered, as a matter of course, just **ONE KIND WORD** to another person... one kind word has a way of turning into many. - Fred Rogers

We once had front porches on our homes. They were a place to observe the comings and goings of neighborhood life. A place to communicate with neighbors, family, and friends. They were a place of welcome and rest.

When America lost its front porches to apartments, condominium developments, and modern suburbia, so went a great deal of our sense of having neighbors.

The American television personality Mr. Fred McFeely Rogers (1928-2003) focused our children towards *who is my neighbor* with his welcoming opening song to the iconic show, *Mr. Rogers' Neighborhood*, and these words, "won't you be my neighbor?"

His opening song took us inside his home, through the front door, where he changed from a suit-coat into a cardigan and exchanged dress shoes for tennis shoes.

In fact, the yellow light on the spotlight in Mr. Rogers' neighborhood was always on yellow to signify "slow down a bit" to children and the parents watching the show.

With the loss of our front porch and the sense of who my neighbor is, we have also lost, ...A sense of valuing others across

the way, the street, next door and a general responsibility to them.

...Care and common courtesies like opening a door, borrowing a cup of sugar, a tool, or an offer of "I'll watch your place while you're gone this weekend."

So who *is* my neighbor in today's culture?



By definition, a neighbor is "a person who lives near another person." It's inevitable that where we live defines who our neighbor is within our living community.

Living in planned communities, like condominium associations, involves some form of living in the community. And it involves neighbors that live closer, all sharing many common areas.

In fact, we just passed through some of the holidays when we

come out of our home and into the communities we live in -- Halloween and Christmas.

Mr. Rogers believed that "the more you grow into a helpful person yourself, the happier you'll find this world of ours is."

But wait a minute Mr. Rogers! You don't live in our reality. You passed away in 2003, and we live in 2017. Life has changed drastically in the 14 years since your death. We are busy people, and we work hard just to keep our head above the water. Our phones and computers are our relationships with others. We get annoyed with people because there is no sense of common courtesy for others. In fact, our disagreements can escalate to anger. Yes, we lack a spirit of working together to solve issues as a community because we're tired and we're hoping someone else will do it. Anyway, isn't that why we have condominium boards?

What if it was as simple as a few kind words like "thank you," "please," "let me get the door for you," "I appreciate all you do here," or "I'll consider your idea on this issue".

We may never regain the front porch, but a better perspective on the world sounds pretty good.



# A Board Member's Code of Conduct Can Guide Your Association Through More Efficient and Effective Board Meetings

By Matt D. Ober

A common frustration for association boards is dealing with issues that arise out of conflict with individual board members. At some point we have all heard of the board member who is hostile, disagreeable or the proverbial "loose cannon." Other boards have struggled with how to rein in the director who consistently advances his or her own agenda without regard to the best interests of the association. Finally, there are directors elected, for whatever reason, who feel compelled to reveal confidential information about the association to third parties. Unfortunately, the Corporations Code does not yet contain a provision allowing the board to remove a director for behaving badly. The slap on the wrist that follows improper disclosure or misconduct does little to undo the damage already done.



There are, however, viable options available to managers and boards to address misconduct. In most cases, the most direct option to control improper behavior is censure. There is no more effective method of controlling improper behavior than by confrontation by one's own peers. A board that regulates itself will send a positive message to the community that its association is governed by those with a high regard for the best interests of the community. If the issue is severe enough, make sure the board consults with association legal counsel about the potential ramifications.

A director must refrain from misconduct and improper disclosure of confidential information. In addition, each director has an affirmative obligation to monitor the conduct of every other director

to ensure that all directors act in furtherance of his or her fiduciary obligation to the association. A board that regulates itself will send a positive message to the community that its association is governed by those with a high regard for the best interests of the community.

Understandably, a director may be uncomfortable with the task of disciplining a fellow director. Therefore, although the Corporations Code already establishes a bench mark for acceptable conduct by board members, your association should consider establishing a code of conduct which outlines the obligations of a director, and the consequences of failing to meet those obligations. If the board chooses to require a code of conduct it should be adopted and in place before an issue arises. That said, associations should not hesitate to implement one at the sign of a problem. If used, a code of conduct should include the following obligations:

- To maintain the confidentiality of executive session information;
- To put personal interests aside and advance the best interests of the association;
- To respect, abide by, and carry out the decisions of the majority of the board; and
- To treat both fellow directors and homeowners with respect, and approach board decisions prepared and with an objective, open mind.
- To maintain current in their assessment payments and comply with the rules and regulations so as to remain in good standing.

Boards of directors are encouraged to adopt a code that meets the needs of their associations. The directors should evaluate those issues that have historically been problems and

reach a consensus on what to include in the code of conduct. The more agreement there is among directors about what to include in the code, the more likely directors will comply. Once the code is completed, a resolution should be drafted by legal counsel detailing among other things, the reasons for the code, and the board should vote to adopt the code of conduct for the association. Until revised or removed, that code will govern the conduct of all current and future directors. Like all rules, the code of conduct must be enforced fairly, uniformly and consistently.

Directors and homeowners should be reminded of the code of conduct for board members on an annual basis, prior to director elections. Ideally, every candidate nominated would have the opportunity to sign the code of conduct as they submit their name to be included on the ballot. If the owners knew which Board members agreed to the code it may help to elect a board that will function in the association's best interest. It seems reasonable to expect that owners should know who they are voting for and that they can expect their association to benefit as a result.

Mr. Ober can be reached at [mober@rhopc.com](mailto:mober@rhopc.com) or by phone: (626) 449-5577



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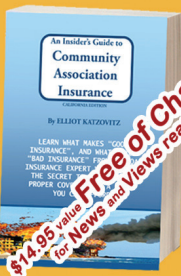
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## Annual Mandatory Requirement

**NEW LAW effective January 1, 2017**

One of the more interesting, bills that came out of a relatively quiet year from a legislative standpoint for California's community associations is SB 918. This law will create a new responsibility for board members and managers of Common Interest Developments. This law, which goes into effect on January 1, 2017, does two main things:

First, it requires an owner to provide their association with all of the following information on an annual basis:

(1) The address or addresses to which notices from the association are to be delivered.

(2) An alternate or secondary address to which notices from the association are to be delivered.

(3) The name and address of his or her legal representative, if any, including any person with power of attorney or other person who can be contacted in the event of the owner's extended absence from the separate interest.

(4) Whether the separate interest is owner-occupied, is rented out, if the parcel is developed but vacant, or if the parcel is undeveloped land.

Second, the bill requires associations to "solicit" these annual notices of each owner, and enter the date into the association's books and records at least thirty days prior to making its annual disclosures required by Civil Code 5300. This section refers to the distribution of the Annual Budget Report and the Annual Policy Statement.

The most significant problem with this new law is that if an owner fails to respond and provide the required notices, the property address is deemed to be the address to which all notices are to be delivered. So, if an absentee owner fails to respond to this request for information, then the mailing address for his unit is required to revert to the unit address. This is not an unlikely scenario and may be

problematic if the owner doesn't receive mail at the proper address.

While the information as to the rental status of the property could prove useful, and for certain associations may help in obtaining FHA certification, there is no indication as to what occurs if the owner fails to provide any information as to whether the property is owner-occupied, rented, or whether the property is vacant or undeveloped land.

In addition, there has been no requirement in the past for an association to track the number of rental units or vacant or undeveloped property within the association. Given that the new law now requires associations to "solicit" that information, it is unclear if the law also now requires the association to track that information or if it only needs to update the address information in the association's books and records. While there is no apparent penalty for failing to track the status of the property as rented, vacant or undeveloped land, it may be the best practice to include that information in the association's records to the extent it receives responses from the owners to the annual solicitation.

So what does this mean for board members? It's a new annual requirement to send out a request to all owners asking them to provide the information listed above. The request, which can be included in another mailing and is not required to be mailed separately, must be sent out early enough to allow the association to update its books and records with any information provided in response to the request no later than thirty days prior to the date it sends out its annual disclosures.

Boards and managers should take time now to prepare an appropriate form to use to solicit the required information, and update their annual calendars and schedule when to send out the annual solicitation to the owners

*Annual Mandatory Requirement:  
continued on page 5.*



# Model Code of Ethics for Community Association Board Members

As a new year begins, it's a great time for Board members to evaluate their commitment as a Board member to their association. This sample code of ethics as provided by the Community Associations Institute (CAI) is not meant to address every potential ethical dilemma encountered by a community association board member, but is offered as a basic framework that can be modified and adopted by any common-interest community.

## Board members should:

- Strive at all times to serve the best interests of the association as a whole regardless of their personal interests.
- Use sound judgment to make the best possible business decisions for the association, taking into consideration all available information, circumstances and resources.
- Act within the boundaries of their authority as defined by law and the governing documents of the association.
- Provide opportunities for residents to comment on decisions facing the association.
- Perform their duties without bias for or against any individual or group of owners or non-owner residents.
- Disclose personal or professional relationships with any company or individual who has or is seeking to have a business relationship with the association.
- Conduct open, fair and well-publicized elections.
- Always speak with one voice, supporting all duly-adopted board decisions even if the board member was in the minority regarding actions that may not have obtained unanimous consent.

*Annual Mandatory Requirement: continued from page 4.*

so that there is sufficient time to update the associations records each year at least thirty days prior to the mailing of the annual disclosures.

## Board members should not:

- Reveal confidential information provided by contractors or share information with those bidding for association contracts unless specifically authorized by the board.
- Make unauthorized promises to a contractor or bidder.
- Advocate or support any action or activity that violates a law or regulatory requirement.

**Always speak with one voice, supporting all duly-adopted board decisions even if the board member was in the minority regarding actions that may not have obtained unanimous consent.**

- Use their positions or decision-making authority for personal gain or to seek advantage over another owner or non-owner resident.
- Spend unauthorized association funds for their own personal use or benefit.
- Accept any gifts—directly or indirectly—from owners, residents, contractors or suppliers.
- Misrepresent known facts in any issue involving association business.
- Divulge personal information about any association owner, resident or employee that was obtained in the performance of board duties.
- Make personal attacks on colleagues, staff or residents.
- Harass, threaten or attempt through any means to control or instill fear in any board member, owner, resident, employee or contractor.
- Reveal to any owner, resident or other third party the discussions, decisions and comments made at any meeting of the board

For some associations, they may also need to consider the budgetary impact of not only the mailing of the form, but the time necessary to update the association's records on an annual basis.



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# THE “NO SURPRISE” LAW of 2017!

Assembly Bill 968 regarding Maintenance & Repairs which was passed in 2014, takes effect January 1, 2017. This law clarifies maintenance obligations for exclusive use common areas.

Unless otherwise provided in the C.C. &R.'s, associations are responsible for maintaining, repairing, and replacing common areas. No surprise here.

Homeowners are responsible for maintaining, repairing, and replacing their separate interests appurtenant to their separate interests. Associations are responsible for repairing and replacing exclusive use common area.

To make this very clear, the key distinction is that owners have to “MAINTAIN” their exclusive use

common area, and associations have to “REPAIR” the exclusive use common area, which is generally, patios and balconies, unless the documents state otherwise.

The difference between “maintain” and “repair” is important to understand. Associations that have exclusive use balconies or patios may want to clarify in their rules what “maintenance” entails. There is no question that “repairs” will be required more often if “maintenance” is not performed. The major challenges are usually with upper floor balconies and the items that residents may decide to place on their balcony, that are too heavy, or not sufficiently protected which may allow water to enter the flooring structure. For example, pots that are too large

and heavy and which are allowed to drain directly on to the flooring are a potential problem. If you allow plants, then a saucer must be required to catch water. Some owner place very heavy objects, such as gym equipment, on their patio, which can also damage the flooring surface and allow water to enter. Owners should not be allowed to attach items to stucco walls, as doing so could penetrate the water barrier behind the stucco.

If you haven't done so already, consider adopting a rule, that requires owners to regularly maintain their exclusive use common area and if their failure to do so causes the association to incur unnecessary repair costs, then the owner may be held liable.

## *MANAGER CERTIFICATION: continued from page 1.*

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. The process includes completing the required courses and obtaining 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 status and 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”.

As a matter of disclosure for 2017, all of the Beven & Brock association managers, and the 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., Suite 200, Laguna Hills, CA 92653. The phone number is (949) 916-2226.

- C. Finley Beven, since 1994, 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:

- David Brock, PCAM designation, since 1990.
- Marilyn Howald, CCAM, CMCA designation through the National Board of Certification, since 1996.
- Laura Aguilar, CMCA, since 2015 and AMS (Association Management Specialist) as of 2016.
- Paul Cannings, CMCA and CCAM
- Angela Nazari, The Community Association Managers International Certification Board, since 2016.
- Trish Ford, The Community Association Managers International Certification Board, since 2004.

The law also requires that the location of the manager's primary office be disclosed which 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.



# WAKE UP! It's 2017! The Year of the Rooster!

Every HOA board needs a rooster. Well, not a real one, but one member who helps to wake up the rest of the board as to the new day and the issues that are important to them. One of the great things about working as a Board is that every board member brings their own strengths and abilities. Boards that operate with only a couple of active board members are at a disadvantage. The board concept for HOA governance is all about having well-reasoned decisions by a group of co-equal and invested participants in the process. The best boards are those that operate with a diverse group of members who serve on the board using their unique strengths and partnering with their fellow board members.

What is the importance of the **rooster** on the HOA board? The primary role of the rooster on the farm is to wake up the rest of the board, and the community, on the important issues of the day. What are those issues?

Let's break the issues into three broad categories.

- 1) The issue that is the **most divisive** issue in practically every HOA
- 2) The most **avoided issue** that could yield great results.
- 3) The **least utilized secret** to association success.

First, what is the issue that is most divisive in almost every association? Without a doubt financial issues create the greatest disagreement within HOA's. There are a couple of trigger points that seem to activate the financial battle:

- a) **Reserves:** This is most often an issue of near sightedness vs. far-sightedness. Very often owners are divided on the issue of funding reserves for future major expenses because it usually means that the assessments need to be increased. Since the reserve components, such as the roof, deteriorate gradually, it makes

the most sense to fund the roof (and other reserve components) gradually as well. Owners who "use" the roof should pay for it, and deferring payment to future owners is inherently unfair. But the great resistance is in the fact that that would mean assessments means need



to increase. The board "rooster" should be the voice to at least point this out for the Board to consider.

- b) **Delinquencies:** It's very easy to not stay on top of delinquent receivable accounts. Delaying the start of the collection process by more than 90 days is not best. It is uncomfortable, to say the least, to begin collection efforts on your neighbor, or sometimes a fellow board member. It is difficult to remember, as board members with a fiduciary responsibility that you have to realize you are operating a business, and not a charity. Board members should be reasonable to accommodate owners requests for payment plans. There doesn't need to be a rush to foreclose, but taking no action is not good either.

- c) **Monthly financial reports:** Some board members shy away from reviewing their regular

financial statements for various reasons. Avoiding this can be problematic in the future if statements are not reviewed at least quarterly.

Secondly, what is the most avoided issue that could yield great results? Board meetings

- a) Most board members are busy, and would prefer no meetings preferring to do business by email. This is illegal. The board must meet in person quarterly, at least. The law does permit meetings to take place via speaker phone, but at least one board member needs to be in a location where owners can attend.
- b) Every board member must be able to hear the others in the meeting.
- c) Meetings are the only legal way to make decisions, and, if structured properly, meetings are more productive than multiple emails.
- d) Meetings should be structured and organized to

*WAKE UP!: continued on page 8.*



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## BEVEN & BROCK

# NEWS & VIEWS

for Homeowner Associations

*WAKE UP!: continued from page 7.*

be accomplished in 60 to 90 minutes. You may need to be the rooster on your board to remind the others of the need to meet.

Finally, The least utilized secret to association success: Creating Community.

Most HOA's are impacted by apathy as well as owners and renters who have no disregard for the rules of the association. It is easier for residents (owners and renters) to violate rules if they have no relationship with fellow owners. Getting people to serve on the board or a committee is easier if people are invested in relationships in the community. Too few communities realize this, and practice it. As a result, they struggle to obtain board members and spend needless time in rule enforcement issues.

Creating community can happen with two events a year. As an example consider having a summer

BBQ potluck and in December, a holiday dessert potluck. For this type of event that is strictly social, inviting renters is a good move. Wouldn't it make sense to get to know your neighbors just because they are your neighbors? A major benefit is that you will find that your neighbors will come to value the community and the decisions that the board makes which are in the best interest of the association. Including renters may actually turn them into owners since they will love living your community. As a "rooster", become the advocate for creating community, so that your association can succeed and become a desirable place to live.

In closing, who is the rooster on your board? If you don't have one, you may need to step up and help wake up your fellow board members to these important and often over-looked aspects of home owners association governance.

Good morning!



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