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NEWS & VIEWS

for Homeowner Associations

October 2017

IF I WAS PRESIDENT OF THE HOA BOARD.....

By Dave Brock, PCAM

1. I would serve only with a full board of people who understand and are willing to commit to their role.
2. I would delegate to other board members specific roles and assignments.
3. I would hold 10 meetings a year, that don't last more than 90 minutes, and that are efficient, productive and enjoyable.
4. I would hire the best vendors, who have proper insurance, and the best track record and expect the best results.
5. I would faithfully follow the recommendations of the Reserve Study.
6. There would never be a Special Assessment.
7. I would not communicate by email about HOA business with Board members, the Association Manager or owners between meetings, unless it is an absolute emergency.
8. I would expect Board members to come to all meetings having read the material provided them a few days earlier.
9. I would not tolerate special favors to anyone or exceptions to the Association policies.
10. I would encourage owners to attend Board meetings to address issues only. I don't want to be a Board member between meetings. It's my home too.



ACT QUICKLY!

2017 Fall **FREE** HOA BOARD SEMINAR & VENDOR EXPO

October 5, 2017

6:30 to 8:30 PM

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Adrian Adams, Esq. and Robert Nordlund, PE are two nationally recognized speakers and together they will address the topic:

“TIGHT BUDGETS, TOUGH CHOICES”

As HOA boards address their budgets for 2018, this seminar will help shed light on the difficult process of how to provide for the needs of the association and do that on a limited budget.

- Does your decision to fund reserves affect property values?
- Balance short “wants” and long term “needs”.
- Separate between true and perceived budget limitations.
- Identify your true budget priorities.
- Grasp what you can and can't do budget-wise.
- Understand what you should and shouldn't do.
- Make budget decisions that will be protected by the Business Judgment Rule.
- Tips to communicate budget decisions (higher assessments) to homeowners.
- Separate your roles as homeowner and board member.
- Score 100% on the seven-question test and you'll score major success in your association.

Adrian Adams, Esq.

With an extensive background in the community association industry, Adrian Adams is one of the leading attorneys in California specializing in common interest developments. Adrian founded “Adams Stirling PLC” and quickly grew his firm into a preeminent boutique firm specializing in highrise condominiums, stock cooperatives, business parks, lake associations, golfing communities, equestrian associations, and ocean-front communities.

Robert Nordlund

A registered professional engineer, Robert Nordlund, PE, RS has been involved in the Community Associations industry since 1982. As President of his own homeowners association, he recognized how vital long-term reserve planning was to the health of Association-governed communities. Robert founded Association Reserves, Inc. in 1986 and has pioneered many widely used reserve funding concepts. For his expertise, he earned the Community Association Institute's (CAI) Reserve Specialist (RS) designation and has the distinction of being RS #5. Robert was involved in creating the 1998 National Reserve Study Standards and has greatly influenced the Reserve Study industry.

Two ways to register:

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

When calling or emailing, leave your name, the name of your association and the number of guests you will be bringing, including yourself.

HOMEOWNER ASSOCIATION NEWSLETTER

The Real Benefit of Adequate Reserves

by Robert M Nordlund, PE, RS

Reserve contributions often are neglected to “what’s left” status in the budget process, often dismissed as “we can’t afford it” and at best “oh well, we better do it”. But I challenge that thinking with some numbers that change the way you perceive Reserve contributions – moving them from a resented expense to one of your best investments.

In a recent study we assembled home sale information in the last year among almost 100 physically similar Reserve Study client condominium associations in a small geographical area with similar demographics. We cross-referenced the home sale on the basis of \$/sq ft to the Reserve Fund strength of the association. What we found was simply amazing. Home values, on a \$/sq ft basis, were 12.6% higher in homes with a strong Reserve Fund (over 70% Funded) than homes in associations with a weak Reserve fund (under 30% Funded). The average condominium home in this area sold for just over

\$350,000. This meant that on average, condominium homes in associations with a strong Reserve Fund sold for over \$44,000 more than homes in associations with a weak Reserve Fund.

The difference in Reserve contributions in those associations, between “inadequate” and “adequate”? Between \$20 and \$50/month, or \$240 to \$600 per year. This demonstrates two things: the power of “curb appeal”, and the power of budget leverage.

Curb appeal is maximized when Reserves are strong, because projects get done on time (no roof leaks, the paint is fresh, asphalt and sidewalks are smooth and inviting, the lobby and elevator interior have been regularly renovated, etc.). Budget leverage means putting your money where it makes the most difference. In this case, \$240 - \$600 a year that results in home values increasing on average by \$44,000 is a slam dunk. In fact, it almost makes me want to buy a condo at a depressed value in a poorly funded

association, run for the board, and turn the place around over the course of two to four years.

In addition to maximized home values, a strong Reserve Fund is generally an indicator of fiscal responsibility – a board that is “taking care of business”, running the association in a responsible, businesslike manner. This typically means monthly financial statements available for review, open and honest board meetings, effective communication with homeowners, etc.

Sounds like a great place to live. So focus on providing sufficient Reserves to maintain your common areas. You’ve heard it’s “the right thing to do” for a long time. Now you know it’s also a smart investment!



Robert Nordlund is President of Association Reserves, Inc. Their website is www.ReserveStudy.com ❖

Workers’ Compensation Coverage for Common Interest Developments – A Mandatory Purchase

By Timothy Cline, CIRMS, Cline Agency Insurance Brokers, Los Angeles, CA



Truman and Gail Lawson had an unwieldy 50-foot palm tree in their front yard and they wanted it trimmed. It seemed like an easy task. The Lawsons

hired Eliseo Lascano, owner of Anthony’s Tree Service, to perform the work. Lascano agreed to charge the Lawsons \$450 and assigned Miguel Fernandez, one of Lascano’s employees with more than four years’ tree-trimming experience, to the task. Unfortunately, Fernandez fell from the tree while performing the work sustaining serious injuries.

The California Business and Professional Code requires a contractor’s license to trim a tree measuring 15 feet or more. (*Bus. & Prof. Code, § 7026.1,*

subd.(c)). Despite apparent misrepresentations to the contrary, neither Lascano, nor his company, Anthony’s Tree Service, were licensed. *State Compensation Ins. Fund v. Workers’ Comp. Appeals Board* (1985) 40 Cal.3d 5, 12-16 Labor Code, makes an unlicensed contractor who is performing work for which a license is required an employee of the hirer of the unlicensed contractor, for the purpose of workers’ compensation. In other words, the Lawson’s, by hiring an unlicensed contractor to do the work, had now automatically become the injured worker’s employer.

Could the above scenario occur at a common interest development? Absolutely. Despite the constant and well-intentioned warnings of cautious community managers,

Boards of CIDs often hastily hire vendors to do work and never think of confirming the existence of the vendor’s workers’ compensation policy.

California law requires ALL employers to maintain workers’ compensation insurance (*California Labor Code, Section 3600(a)*). Furthermore, nearly every set of CC&Rs require a Board of a common interest development to purchase workers’ compensation coverage “to the extent necessary to comply with applicable law.”

Nevertheless, many Boards ignorantly argue the coverage is unnecessary thinking that an injured worker will “be covered somehow.” Unfortunately, nothing could be

Workers’ Compensation Coverage for Common Interest Developments: continued on page 3.

MANDATORY ANNUAL FINANCIAL DISCLOSURES DUE BY DECEMBER 1! (for all calendar year Associations)

In 2014, the California legislature revised the manner by which common-interest-developments should notify their members of the annual disclosure requirements. The legislature created two types of reports: 1) The annual budget report (ABR), and 2) the Annual Policy Statements (APS).

The preparation and distribution of the two annual disclosure packages to all owners is one of the most important requirements of the board of directors. The annual disclosures are now required to be organized into two sections.

November is the last month of the year in which this material must be distributed for associations who operate on a calendar year. If a management company is involved with your association they should be handling this for you. If you do not have a management company, the board is solely responsible for this important task.

The specific sections of the law that can be referred to for more specific information are Sections 5300 and 5310. Below is a summary of the requirements for each report.

The good news is that unless your rules (or policies) have changed, you can distribute the same Annual policy statements every year.

ANNUAL BUDGET REPORT

1. Approved operating budget and reserve allocation for the next fiscal year.

Workers' Compensation Coverage for Common Interest Developments: continued from page 2.

farther from the truth.

If Miguel Fernandez were injured at a common interest development, could he sue the Association and seek coverage under the Association's general liability coverage? No. All general liability policies covering community associations contain specific exclusionary language which eliminates coverage for

2. The most current Reserve Study which contains the following information:
 - a) The Executive Summary from the most recently updated Reserve Study.
 - b) Reserve Funding Disclosure Form/ Table
 - c) Board statements regarding the reserve study.
3. Master Policy Insurance and information regarding other policies.
4. Insurance disclaimer language verbatim from Civil Code
5. Association Loan Statement (if applicable)
6. FHA Certification
7. VA Certification

ANNUAL POLICY STATEMENT

1. Communication with the Association statement
2. Overnight mailing address statement
3. Secondary address statement
4. General notices statement
5. Association minutes statement
6. Assessment Collection Policies statement
7. Collection Policy
8. Association Rules and Regulations including Fine Policy, if any
9. Dispute Resolution Procedures (ADR/IDR Rules)
10. Architectural change rules and procedures

The deadline for all associations is thirty days prior to the end of the

“any obligation” of the Association “under a workers compensation (sic) law.” (ISO Language - 1992 - CG 00 01 10 93)

If the Board is sued by the homeowners for failing to purchase coverage, surely the Board would have coverage under their Directors & Officers Liability policy. Unfortunately, again the answer is

Workers' Compensation Coverage for Common Interest Developments: continued on page 4.

year, unless your documents have a more strict time frame. While these disclosures may appear excessive, they serve to alleviate the Board of future liability. These disclosures meet the annual requirement of the association to disclose important aspects of your association to owners, who are then responsible for disclosing it to future owners. Boards are encouraged to take this legal requirement seriously.

If this requirement comes as news to you, and you have not provided this to your owners in the past, you can obtain more information by researching Sections 5300 and 5310 of the Davis-Stirling code. ❖



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Is Your HOA FHA Approved?

By Melissa Bourgault and Julie Jones, FHA Project Specialists

As of last year, common-interest developments were required to comply with a new annual disclosure requirement. The requirement which affects all homeowner associations (except Planned Developments) required association to disclose if they are FHA and VA approved.

The issue of FHA and VA approval caught many board members by surprise, since this is not an issue that they have been involved with before. What does it mean to be FHA or VA approved?

FHA certification means that your entire condominium project has been approved by HUD as an eligible option for buying and selling homes using FHA loans. Similarly, VA approval means that approved veterans can use their VA (or GI) benefits to purchase a home in your association.

What are the Benefits for the Association?

- If your community is not FHA approved, realtors will not be able to show your property to potential FHA buyers. Increased FHA inventory allows realtors to show more properties driving the competition for higher dollar amounts.
- Homeowners have more options to sell their property to not only conventional buyers but FHA approved buyers as well.
- By expanding the pool of buyers, homeowners may be able to sell their units at a higher dollar amount and more quickly, since

the pool of potential buyers is increased.

- Seniors (65+) looking to get a Reverse Mortgage are only eligible if the entire community they live in is FHA approved.
- 25% of all mortgages are FHA and qualifying for an FHA loan is easier than conventional, as well as allowing for lower down payments @ 3.5%.

How does an HOA get FHA or VA approved? Most importantly, work with a company that specializes in facilitating and submitting certification packages to HUD. The FHA approval company works directly with you or your manager to collect the required information, submits your package to HUD and follows up on a continual basis.

The company must work closely with the Department of Housing and Urban Development (HUD) to ensure that the review process is smooth and complete.

Ideally, you should not pay anything until your association is approved. It is possible to find companies that work in this manner.

In the meantime, your association must disclose whether or not you are certified each year. There are several ways to accomplish that, but as a volunteer board member it is best to rely on a professional company for this information as well.

For more information visit FHA Approvals at www.fhaapprovals.com, call 714-677-2097 or email "info@fhaapprovals.com". ❖

Workers' Compensation Coverage for Common Interest Developments: continued from page 3.

no. Consistent in every Directors & Officers Liability policy is a specific exclusion for any claim "arising out of, directly or indirectly resulting from or in consequence of, or in any way involving"... bodily injury or sickness—whether workplace related or not. In other words, if the Board is sued for a failure to maintain workers' compensation coverage, they will find themselves without any benefit of D&O protection.

A Workers' Compensation policy covering a management company can only protect that single entity. (In order for a second entity to be named on a Workers' Compensation policy, it must own at least 50% of the stock of the second entity). As a result, the Workers' Compensation policy covering a management agent cannot be modified or endorsed to extend

Workers' Compensation Coverage for Common Interest Developments: continued on page 6.

DISASTER PREPARATION FOR HOA COMMUNITIES!

Get Ready: It's not a matter of "if" but "when"!

California residents have always known that we live in "earthquake country". Seismologists are reporting California is overdue for a major earthquake. Why is this being said now? A large grouping of micro-quakes have occurred with high frequency -- one after another -- under the Salton Sea, a lake located directly on the San Andreas fault southeast of Los Angeles. Earth scientists say this, "swarm" of quakes could act like the wick to a firework, triggering the infamous San Andreas fault to unleash a historic and devastating 7.0+ quake right through our nation's 2nd largest city. The San Andreas fault typically shakes once every 200 years, but according to geological history it hasn't since the 17th century. If 1680 was the last big one, LA is about 136 years overdue!



Living in California requires all of us to be ready for "the big one". Residents of common-interest-developments will experience this together, and should prepare together. An earthquake of this magnitude would be considered a "disaster". Disasters, by definition, are events that overwhelm police, fire, utility, medical emergency responders, and property management companies.

Who should be involved in disaster preparation?

Disaster preparation must involve the entire community, owners and tenants. Every resident will be affected by a serious earthquake. This is not the time to distinguish as to who is an owner. In a disaster, everyone

in the community is involved. Tenants should be included in the preparation.

Who should lead the effort to organize a meaningful disaster response?

While the board is in charge of the association, the leadership of this important task should be handled by a committee, again, comprising of both owners and tenants. The board already has a lot to do in any HOA, and undertaking this important task should involve the board, but not necessarily require their leadership, unless no one else is willing. The board may want to survey owners to see if there is any interest from residents to form a committee.

Why is it necessary to prepare since we will have access to normal emergency services?

All of the disaster preparation material urges us to be prepared to handle our own emergency response initially. A major earthquake will overwhelm the services that you would think you can rely on such as FEMA, local fire, police, medical, utilities, as well as your association management company. You will need to be prepared as a community to address the issues that will require immediate attention.

How should residents of a homeowners association prepare?

The best place to begin is to watch an excellent set of short videos, that can be found by going to YouTube and searching for "Map Your Neighborhood". The "Map your Neighborhood" program was created in Washington State and is one of the model programs now being utilized in California.

When you search on YouTube, you should see the word "TigardCERT". This will help you identify the right video. The video is in 11 short parts. This would be a great video to share with owners in your community.

Disaster Preparation for HOA Communities: continued on page 6.

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to a homeowners association client. If the injured individual is deemed to be the employee of the Association, we couldn't rely on the management company's workers' compensation coverage to protect the community association client.

Since there is actually no "cap" to the benefits paid out on a workers' compensation policy, failing to maintain coverage could potentially cost the Association hundreds of thousands of dollars. But the disruption could impact more than just the Association's pocketbook—a claim could result in preventing homeowners from selling, transferring, or refinancing their home. When an employee is injured while working for an Association who has failed to maintain workers' compensation required by law—and the Association fails to pay or post a bond to pay the compensation

due the employee—the employee's compensation is paid from California's Uninsured Employers Fund. The State will then place a lien on the Association for the same amount paid as compensation to the injured worker. No units within the development could be sold or refinanced until the lien is satisfied.

Case law surrounding the issue of employment has consistently held that the most important element in establishing an employer/employee relationship is one of "control." Despite holding him/herself out as an independent contractor, if the Association controls the details of the work performed and the injured worker has no other workers' compensation coverage, it is a virtual certainty that the Workers' Compensation Appeals board (WCAB) will find that a worker is an employee of the Association and not an independent contractor.

California Labor Code Section 3202 requires that workers' compensation law be "liberally

construed by the courts with the purpose of extending their benefits..." and this consistently happens with questions of employment. If an "independent contractor" does not otherwise have workers' compensation insurance, the courts, believing they have an obligation to award benefits, may liberally construe the law to find that the common interest development was the employer.

The question is, "How can the association or manager prevent itself from being considered an employer?" Hiring only licensed contractors who maintain their own workers' compensation coverage is the single best defense against being roped into an unwanted workers' compensation claim.

Tim Cline, CIRMS, is President of Cline Agency Insurance Brokers of Los Angeles.

www.clineagency.com; (800) 966-9566 ❖

*Disaster Preparation for HOA
Communities: continued from page 5.*

If you do a google search for "Map Your Neighborhood", you may also find some regional live training classes that are being offered as well. You may be able to check with your local Fire Department or Red Cross.

The Map Your Neighborhood program guides you and your neighbors through simple steps to help enhance your preparedness for an emergency. These steps will help you to quickly and safely take actions that can minimize damage and protect lives. It is designed to improve disaster readiness at the neighborhood level and teaches neighbors to rely on each other during the hours or days before fire, medical, police or utility responders arrive.

Essentially, the preparation involves making sure that individuals and neighborhoods are prepared and able to help themselves and each other medically and mentally for a length of time - possibly two weeks. Do you have enough water, food and medical supplies for your family and pets? Do you know the resources (skills and equipment

inventory) in your neighborhood?

1. Take care of yourself and family first
2. Protect your head, feet and hands with protective clothing
3. Check for injuries and natural gas leaks at your home
4. Shut off water at the house main to preserve clean water and avoid outside contamination
5. Place HELP/OK sign on front door or window for emergency teams
6. Put one of your fire extinguishers on front curb to put out small fires
7. Go to the Neighborhood Gathering Site
8. Form teams to 1) listen to radio for alerts; 2) check on elderly, disabled, children, animals; 3) check gas and water leaks; 4) check homes with HELP signs or with no sign
9. Return to Neighborhood Gathering Site to share response, communicate needs to the city, plan next steps

Taking the steps to be prepared will remove some of the fear and uncertainty in dealing with the huge

anxiety caused by even the thought of an earthquake.

Let's all be ready together.

Other Resources:

<http://www.ESPfocus.org>: This site has great information and copies of regionally specific brochures County of Los Angeles Emergency Survival Guide and Get it Together!

<http://www.alert.lacounty.gov>: ALERT LA County (Los Angeles County's Emergency Notification System - formerly SNAP - Specific Needs Awareness Planning) - is a FREE mass notification system for LA County's residents, schools and businesses. The system will contact you when an emergency or a critical situation happens (reverse 911). Register your phone number through their website.

<http://www.cert-la.com> : CERT (Community Emergency Response Team) - This FEMA-sponsored effort is a more intensive all-hazard training, and free classes are held in most communities. ❖

Apathy: The Greatest Challenge in HOA Living!

One of the greatest common issues that many homeowner associations struggle with is apathy. Apathy is defined as a lack of interest or concern, especially regarding matters of general importance. It is interesting to think that apathy in a homeowner's association is, by default, an expression of "trust" in those who are willing to serve on the board. Most board members reading this right now are saying to themselves that this so called "trust" lasts only until something controversial is decided or until a decision is made that does not agree with an owner's personal preference.

A common complaint of board members who want to get off the board is that it is a "thankless job". And unfortunately, they are not wrong. Board members get tired of giving their time for their community without any acknowledgement of gratitude from the owners they serve. And when difficult decisions have to be made, they have to endure negativity and hostility from some of their neighbors.

Apathy may be because the perception of the board role is not something any would want to volunteer for. Some boards function in ways that do make their jobs more difficult. Examples of this include long and unorganized board meetings, lack of business-like decorum at board meetings, decision-making processes that are flawed, micro-management or an unequal burden on some, but not all board members. Who would ever want this job if it appears so complicated?

Board members who haven't attended any training may not know what their role should be and how to function in that role. For example, a board may assume that they should operate as onsite building managers, and respond to residents who knock on their door at any hour. A true building emergency may warrant a board member being involved in an issue, however any owner should be able to call management for emergency maintenance services.

As important as this job is, don't over complicate it. The job of the board member is to do the right thing for the entire association. The law does not require board members to be experts in association or property management.

In fact, the job of the board member is made much easier and actually more enjoyable by the boards' reliance on quality vendors and outside experts and consultants as needed.

One important step toward resolving the issue of apathy is to change the climate in which many associations operate. **Homeowners who want to continue in having the board continue to serve would benefit by showing more appreciation and gratefulness to the board even if they don't always agree with the board's decisions.** This does not necessarily imply agreement with the board, but respect for their work and willingness to lead.

Owners, begin your dialogue with the board with a spirit of appreciation and then offer constructive solutions to the issues the HOA is facing. This would cause board members to serve for a longer period before burning out and help to alleviate the apathy issue.

Apathy is also a result of residents having no informal and social interaction with each other. Our technological culture favors communication and interaction electronically, and not in person. If owners actually met each other socially, once or twice a year informally and could get to know each other it would actually encourage owners to participate in a cooperative manner within the community. Human interaction creates community, not rules and regulations. It takes some effort to get a tradition started, and it needs to be simple. Everyone who attends can bring a dish to share, and their favorite beverage. You can meet in the driveway and BBQ or at the pool. The results of gathering together will reap great long-term benefits in the community.

Finally, to address apathy prior to your next election, begin the election process sixty days prior to your election. The election inspector should send out nomination forms to all owners and indicate why owners need to consider serving on the board. The health of your investment is at stake, and is best represented by a full slate of board members who are willing to come together every month or two for an hour or so to make well thought through decisions.

Education is important, since many owners mistakenly believe that someone else will always volunteer for them, and they will never have to give time to their association. Owners should be made aware that the role of serving on the board doesn't have to involve an inordinate amount of time.

As board members who have served for many years, keep your eyes open for your replacement on the board. You shouldn't have to serve forever, and a gradual board replacement over several years is ideal for the health and stability of your association. ❖


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BEVEN & BROCK NEWS & VIEWS for Homeowner Associations

HOA BOARD MEMBER EDUCATION

Education for volunteer HOA Board members is essential for success as board members. Due to the ever-increasing complex and changing nature of the laws and regulations that impact common-interest-developments staying on top of these changes greatly increases a board's member ability to succeed in their role, and operate in confidence.

There are several ways for board members to be educated, and Beven & Brock offers two free ways. The only cost is time in attending these free events, which are offered in Pasadena.

Upcoming events:

October 5, 2017: 6:30 to 8:30 PM. "Tight Budgets, Tough Choices".

This event will feature two highly respected leaders in the HOA industry: Robert Nordlund, PE, RS, and Adrian Adams, Esq. of "Davis Stirling.com" in a discussion about making tough budget choices when money is tight. Reservations can be made at HOASeminars@bevenandbrock.com.

October 17, 2017: 6:30 to 9:30 PM. Basic Board Education Course.

Three hour training course for HOA current and prospective Board members. A course syllabus and Certificate of Completion is provided. This class is taught by Kelly Richardson, Esq. of Richardson Harman Ober, PC, and is co-sponsored with the Community Associations Institute. Seating is limited, and reservations may be made by emailing: BoardTraining@bevenandbrock.com. Priority is given to current Beven & Brock managed associations. This course will be offered next in early 2018.



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