



Manager Certification: Does it Really Matter?

By Dave Brock, PCAM

Common-interest developments, aka HOA's, have a range of choices when it comes to making a decision for hiring a management company. Management companies range from national corporations to sole proprietors who work out of a home office.

- What are the differences that a board should be aware of in shopping for a management company?
- How does a board decide among the myriad of management firms?
- What is the best fit for your association?

As a volunteer board member your inclination should be to work as efficiently as possible. Making the best long-term decisions about vendors is how you reduce your labor as a volunteer. (Remember the hourly rate you are earning as a board member.) It is so important that you make good decisions the *first time* about all your vendors.



Why is the decision to hire the right property manager or Management Company so important?

- Managers are integrally involved with your finances.
- Managers play a significant role in your maintenance vendor selection
- The laws change every year, and the manager must stay current with the legislative changes.

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New Year, New Law(s), what Sacramento is Doing For (To?) HOAs in 2018

FREE BOARD SEMINAR & VENDOR EXPO!

2017 was a busier year than in many recent years for HOAs in Sacramento, as six major new bills were signed into law which affect associations. In addition, HUD has passed regulations in late 2016 regarding Fair Housing, and the State Fair Employment and Housing Council is currently considering major new regulations on the subject.

If that wasn't enough, last year's marijuana law takes its second step as beginning January 2, cities may license marijuana stores.

The presentation will cover:

- The new document recording tax, and why HOAs are concerned SB2
- The federal regulation on sexual harassment in housing projects, including HOAs, and the coming state regulations – how to prepare (or not?)
- What address should the HOA use for members, and what if they don't respond? AB1412
- Can a contractor install a cabinet in one condo and lien the entire project? AB534
- Solar energy systems – are they basically mandatory now? AB634
- Manager disclosures – about related companies - AB 690
- Having the Communist Party speak at your HOA? SB 407 says "OK"
- Marijuana parties in your HOA?

Plan on attending this evening which will address these eight new legal issues. Hear not only WHAT the law changes but HOW it affects your HOA and WHY you would care about it. Lastly, practical tips will be offered regarding compliance.

Speaker: Mr. Kelly Richardson, Esq.

**February 22, 2018
6:30 to 8:30 PM**

Reservations: HOASeminars@bevenandbrock.com;
or by calling (626) 795-3282, ext. 886.

2018 Legislative Update

By: Matt D. Ober, Esq., CCAL



2017 was one of the most active legislative years for Community Associations in recent memory. Perhaps it was the Governor's "official" end of the drought that left State lawmakers with time to micromanage our communities on issues from free speech to solar; from new disclosure obligations to recording fees. Now that the dust has settled, we are left with the following legislation for our communities to adjust to in the coming year.

SB 407 Non-Commercial Solicitation

SB 407 adds Civil Code Section 4515 to the Davis-Stirling Common Interest Development Act to protect community association members' and residents' ability to 1) peacefully assemble or meet; 2) invite public officials, candidates and homeowners representatives to the community to speak on matters of public interest; and 3) canvass and petition the members, residents and board about, or distribute or circulate information about common interest development living, association elections, legislation, election to public office, or the initiative referendum or recall process. The law effectively renders void governing document provisions that prohibit a member or resident from engaging in the above activities.

In addition, this law carves out a resident's right to use common area facilities for an assembly or meeting about the above topics (if not otherwise in use) without being required to pay a fee, make a deposit, obtain liability insurance, or pay the premium or deductible on the association's insurance policy in order to use the common area for the above purposes. Finally, SB 407 imposes a civil penalty of \$500 for each violation of the statute.

The concerns about this legislation are several. While it does not allow an owner or resident to invite the general public into the community, the law does subject a community's residents to being approached, petitioned, and provided flyers on any number of subjects. Many residents will see this as an invasion of their privacy

or right to quiet enjoyment. Up until now, residents enjoyed a level of privacy in their communities, free from canvassing or petition on legislative or political issues. Many will find this law offensive. Moreover, although the law limits canvassing, petitioning, distributing and circulating to reasonable hours and in a reasonable manner, it seems to leave an association with relative little authority to regulate the activities protected by this bill. Finally, it is problematic that the law carves out an exception from paying common facility rental fees as long as the use is for a purpose protected by this statute, when other residents may be required to pay a fee for other personal uses. In this way, the law requires the association (and other members) to subsidize a member's use of a common area facility as long as it is being used to address common interest development living, association elections, legislation, election to public office, or the initiative



referendum or recall process.

AB 634 - Provides for solar energy systems on multi-unit common area roofs and carports

AB 634, like much environmentally-based legislation that came before it, renders void and unenforceable any governing document provision that prohibits the installation or use of a rooftop solar energy system on a common area roof (in which the owner resides, or on an adjacent garage or carport assigned to the owner as exclusive use.) In other words, this bill allows an owner of a unit in a multi-unit condominium building to install solar panels on the common area roof, provided he meets the criteria for doing so.

AB 634 amends Civil Code 714.1 and Civil Code Section 4600, and adds Civil Code Section 4746 to the Davis Stirling Act to pave the way for an owner to place solar panels on the

common area roof. The amendments to the Civil Code not only prohibit any general policy or provision that prohibits rooftop solar installations on multi-unit condominium roofs, but also, they carve out an exception to the 2/3 membership approval requirement of Civil Code Section 4600. Under this bill, like with electric vehicle charging stations, membership approval shall not be required to install and use a solar energy system on a common area roof provided the requirements of Civil Code 4746 are met.

New Civil Code Section 4746, contains specific requirements the solar installing owner must meet including, 1) notifying each owner in the building; and 2) maintaining owner's liability insurance. Further, Civil Code Section 4746 allows an association to impose additional reasonable restrictions that require a solar site survey to determine usable solar roof area and equitable allocation of usable solar roof area among all owners sharing the same roof or area. Such restrictions also can require the owner and successive owners of the unit to be responsible for 1) damage caused by the installation, maintenance of, repair, removal and replacement of the system; 2) costs of maintaining repairing and replacing the system, and restoring the common area; and 3) disclosing to prospective buyers the existence of the system and the responsibilities stated above.

It should be noted that AB 634 does allow an association to impose, per Civil Code Section 714.1, reasonable provisions that restrict installation in common areas, require maintenance, repair or replacement of roofs, or require installers to indemnify or reimburse the association for loss or damage caused by the installation, maintenance or use of the solar energy system.

The concerns presented by this legislation are many, not the least of which is that it allows for a taking of common area by an individual owner without a membership vote. But the one saving grace is the feasibility study to determine usable solar roof area and equitable allocation of roof area. Should the study determine either that the roof area is not feasible

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for a solar energy system, or that equitable allocation is not possible, the Association would be able to deny the installation.

Other concerns presented by the legislation are that the bill allows an owner to place solar panels on a common area roof without adequate protections for the association or its members from property damage, voiding roof warranties, water leaks, and resulting damage. Further, the law does not require adequate insurance and indemnity requirements to protect residents and the association from liability and damage. And perhaps most concerning is that the bill lacks a clear, reliable procedure for determining whether a common area roof is suitable for a solar energy system, opening an association to owner disputes and possible lawsuits. The law is vague as to the method of determining proper allocation of common area roof space among all owners. In all likelihood, a roof allocation mandate is unworkable in a multi-unit condominium property with limited roof space.

AB 690- Manager Disclosures

AB 690 takes the managers disclosure obligation a step further and now mandates the disclosures required by Civil Code Section 5375. In addition, AB 690 addresses undisclosed manager conflicts of interest by adding to the Civil Code Section 5375 disclosure items “(d) any business in which the manager has an ownership interest or profit sharing arrangement; and (e) whether the manager receives a referral fee or other monetary benefit from a third-party

provider of disclosure documents. Further, this bill adds Section 5375.5 to the Civil Code which defines conflict of interest to read “(a) any referral fee or other monetary benefit that could be derived from another business that provides services to the association; or, (b) any ownership interest”. In other words, if a manager operates a construction company that services an association, and that manager profits from that construction work, the manager must disclose this relationship. AB 690 clearly is intended to inform potential association clients of the manager’s existing business relationships or incentives that may present conflicts of interest.

Finally, AB 690 also adds subsection (b) (12) to the Civil Code 5300 Annual Budget Report requiring an association to disclose a completed copy of its Document Disclosure Summary Form pursuant to Civil Code 4528 so that the actual fee for copies of certain requested documents is stated.

AB 1412 Correction to last year SB 918

The 2016 legislative session brought us Civil Code Section 4041 requiring owners annually to provide an address for purposes of receiving notices from the association. The existing statute required the property address to be used in the event the owner failed to provide a mailing address. This created a dilemma for management companies who may have had actual knowledge that an owner lived off-sight, yet that owner did not provide the annual disclosure. This required the manager to send mail to the property address even though that manager knew the owner did not reside there. AB 1412 corrects

this by allowing the manger to use the last known address on record with the association, if provided. Otherwise, association mail will be sent to the on-site property address.

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The Perfect Board Meeting

By Dave Brock, PCAM

HOA Boards are required by law to conduct open board meetings to make decisions. Meetings are ground zero for every decision that an HOA makes. However, meetings are often unorganized and unnecessarily long.

Owners who are not on the board are entitled to know WHEN their board meets, what they are discussing, and can speak to the Board if they choose. The Davis-Stirling law is very specific

on these issues.

Since meetings are required by law and important for the investment value of your property, are there better ways to do meetings? Consider these five tips for running better meetings: purpose, preparation, punctuality, patience and policy!

The Perfect Board Meeting: continued on page 5.

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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.

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.
- 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. ❖

If you would like a Word version of the Code of Ethics for Board Members for possible use in your association, you may request that at HOANewsletter@bevenandbrock.com.

First, what is the purpose of Board meetings?

Decision making is the primary function of the board meeting, and a sound process for making good decisions is crucial. To do this effectively, the board must learn the art of *healthy* deliberation and discussion. Before an item is discussed it should be brought to the board as a motion. A motion is a statement of the issue to be decided by the board. Once a motion is on the table, and seconded by another board member, then it is time for discussion. After appropriate discussion, it's time to vote. The vote becomes the decision of the board, whether the vote went your way, or not.

The President must not allow any board member (including him/herself) to dominate the discussion. The quiet board member should have an opportunity to express their opinion. It is important that each board member approach every issue with an open mind. The best decisions are those that are made by a group that has healthy disagreement and discussion. This process should also include input from outside experts as well as your constituency, the owners. Owners have a right to attend meetings, and if they choose to voice their opinion, they can do so during the required Open Forum portion of the meeting.

The second important consideration is **preparation**. In order for meetings to be run efficiently and not last longer than necessary, the President should require that board members have all background material in their hands four to five days prior to the board meeting. This will mean that deadlines must be established with your vendors, especially the association manager, who submits items for the meeting. It seems obvious, but it must be said, that board members should actually read the material prior to the meeting. The meeting itself is not the time to get up to speed on the issues, unless you enjoy long meetings. Posting the Agenda four days in advance of the meeting in the common area is

legally required and helps to keep the meeting focused. The board cannot discuss anything that is not on the agenda. Once the meeting begins, any conversation among board members which does not pertain to the Agenda should be deferred until after the meeting adjourns. The President, or Chair, of the meeting is responsible to make sure the meeting stays focused on the issues on the agenda. If there is not sufficient information to make a decision at the meeting, table it for a future meeting.

Punctuality and consistency are important factors for the success of board meetings. Start meetings on time providing there is a quorum. Board meetings and decisions cannot be made by email. Meetings must be held as specified in the by-laws, and usually at a place within the association, or close by. It is acceptable for some board members to be present telephonically, as long as there is a physical location for the meeting where owners can attend if they choose. The requirement is that everyone must be able to hear everyone else. Meetings lose effectiveness after sixty to ninety minutes and if they begin too late into the evening. Since most board members work, the ideal time for board meetings is 6 PM.

The governing documents of your association may specify the frequency of board meetings. But if not, it is recommended that you have four to ten meetings a year. A board may elect to not meet in one month of the summer, and during the month of December. If the association is smaller, and there are no major issues, meeting quarterly may be adequate providing the governing documents allow this. It is best to set a consistent day of the month (or quarter) for your meetings. At the first meeting of a new board, establish the best day or evening that works for everyone. The board members can then set other regularly scheduled events around this meeting, thus increasing the likelihood that all members will be present.

Patience is a virtue especially with Board meetings and decisions. The best decisions by groups always take

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Manager Certification: Does it Really Matter?: continued from page 1.

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

If you required surgery would you want the most qualified surgeon? Or, if you were seeking an investment advisor, you should want the most highly qualified professional. Your HOA investment manager choice should be no different.

Common-interest-development managers can be “certified” pursuant to Section 11502 of the Business and Professions Code, but strangely the law does not require them to be. The only requirement is that manager disclose whether they are certified at the beginning of the contract, and thereafter, every year. 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 required courses and obtaining actual “on the job” experience. There are continuing educational requirements as well, and re-certification must be completed every three years.

A CID 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 a related field.

Why is it advantageous to work with a certified manager? There are several points to consider:

1) Ethics - a HOA board should be concerned that their management company/manager has integrity and operates honestly. Both the Community Associations Institute (CAI) and the California Association of Community Managers (CACM) have Codes of Ethics and Standards of Practice. Only Certified managers are bound by these codes. Board members who work with a manager who is not certified have no recourse to deal with an issue, other than legal action.

2) Transparency - boards have full access to information and owners have access to most, but not all, information. The manager should

facilitate timely access as requested and required by law.

3) Accessibility: as a board who needs to rely on your management partner, it is important that you have immediate access to your manager, or a member of the management company staff. HOA managers, like anyone, need to take vacations periodically, or may become ill and require time off. Does the company provide back-up office support for your manager during these times?

4) Conflicts: both managers (and board members) can have conflicts of interest. A 2018 law, requires management companies to disclose relationships with affiliated companies that may provide services to your association, where the manager, or management company have an ownership interest. As a board member, you should know when the cost of doing business benefits the management company in another way.

5) Knowledgeable - the CID (aka HOA) industry is continually impacted by new laws every year. As a volunteer board member, you should not have to keep up on law changes. You should expect that your manager is doing that for you, and your manager or management company can provide you the updates as they occur.

In summary, consider your investment and the value of your time. When looking to utilize a manager it is important to make the best decision you can. ❖

The Perfect Board Meeting: continued from page 5.

longer, but groups generally make better decisions. Don’t be frustrated by the process involved, rather let your desire for the best result for your community and your investment win. It takes time for all Board members to deliberate and voice their opinions, but the result should be worth the wait. Unless you are dealing with an emergency, take your time to make the best decisions possible.

Strive to be a **policy** making board. What is that exactly? Establishing policies for similar issues will mean

that the board doesn’t have to work so hard in the long run. Establishing a well-thought through policy will avoid having that same discussion again for similar issues. For example, establish a policy on how you will address architectural issues so there is a consistent way architectural requests are handled.

Boards who create policies are able to operate more efficiently over time. Simply, once you have decided how you operate with a given set of facts, there is no future discussion unless you believe your policy is flawed. It also helps those who work with you, such

as the manager, to have the ability to speak on the Board’s behalf and not come to the Board each time a similar issue arises.

In closing, it is necessary to realize the importance of board meetings in the life of the association. Good decisions impact the investment value of the property. The combined value of the units in your association is easily in the millions so it is important to take a business-like posture in your meetings. If you view the decision-making process correctly you will help to enhance value in your association. ❖

MANAGER CERTIFICATION: The Annual Disclosure

By Dave Brock, PCAM

As a matter of disclosure for 2018, 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, CCAM, since 1994, Emeritus; Real Estate Broker license
- Vianna Boettcher, CCAM, since 2006
- Paul Cannings, CCAM, since 2003
- Roman Esparza, CCAM, since 2009; Real Estate Sales license (inactive)
- Juanita Flores, CCAM, since 2004
- Laura Garbo, CCAM, since 2003
- Lori Lacher, CCAM, since 2003
- Sue Threadgill, CCAM, since 2003
- Marilyn Howald, CCAM, since 1996
- Laura Aguilar, CCAM, Since 2015

- Tricia Ford, CCAM, since 2004.

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; Real Estate Broker License
- Marilyn Howald, CMCA, designation through the National Board of Certification, since 1996.
- Laura Aguilar, AMS (Association Management Specialist) as of 2016.
- Paul Cannings, CCAM, since 2003.
- Angela Nazari, CMCA, The Community Association Managers International Certification Board, since 2016.
- Tricia Ford, CMCA, 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.

MANAGER CONFLICT DISCLOSURE

AB 690 which takes effect on January 1, 2018 requires managers to disclose any business in which the manager has an ownership interest or profit sharing arrangement; and (e) whether the manager receives a referral fee or other monetary benefit from a third-party provider of disclosure documents, or any referral fee or other monetary benefit that could be derived from another business that provides services to the association; or, (b) any ownership interest.

Beven & Brock, and any manager employed at Beven & Brock, has NO ownership interest in another business, and does not receive any referral fee or other monetary benefit from businesses that provide services to the association, other than the one situation indicated here:

Vianna Boettcher is on the board of directors of Audio-Comm Systems, Inc., a business that is operated by her husband. ❖

Wet Weather Preparation for 2018

Winter is arriving late this season, but it is never too late to be prepared. Here is what should be done at a minimum:

1. **Make sure that all area drains are cleaned out.** This includes ground level, subterranean garage, and roof drains.
2. **Make sure all roof gutters are cleared of leaves and debris.**
3. **Do a roof inspection.** Most roof leaks are caused by the failure of "mastic." Mastic is used to seal the pipes that extend through the roof. Mastic becomes deteriorated by the sun and has a shorter lifespan than your roof. A qualified roofer can check your roof and make repairs, which is much less expensive than dealing with the results of a roof leak. While the roofer is there, ask them to look at a few

south or west facing windows to make sure the seal looks good.

4. **Test your sump pumps.** Subterranean garages most often have pumps that pump the water out of the garage. This should be done every year to make sure they will function when you need them to.
5. **Review last year.** If you can remember the last time it rained, perhaps, there are some troublesome areas of your property that usually cause problems when it rains. Pay close attention to those issues.

There is nothing difficult or expensive about being prepared for the rainy season. The cost to prepare is a small fraction of the cost to clean up after a rain storm. ❖



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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:

March 6, 2018: 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.

February 22, 2018: 6:30 to 8:30 PM. 2018 HOA LEGISLATIVE UPDATE

The new laws pertaining to HOA's for 2018 will be addressed as well as new guidelines that will impact every HOA from the Department of Fair Employment and Housing (DFEH). You may be shocked and disappointed when you learn what is now being required of HOA's. The speaker will be Kelly Richardson, Esq. of Richardson Ober, PC. Reservations can be made at HOASeminars@bevenandbrock.com; or by calling (626) 795-3282, ext. 886



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