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NEWS & VIEWS

for Homeowner Associations

July 2018

2018 LEGISLATIVE UPDATE

By Dave Brock, PCAM

Every year the California legislature stays busy introducing and voting on new laws, some of which make life better, or worse, depending on your perspective. The balance seems to always tip to worse for Californians who live in common-interest-developments and serve on boards.

There are several pending laws that owners of common-interest communities should be aware of, and this is the time to make your voice known to your Assembly member



and Senator. To find out who your state representatives are, go to <http://findyourrep.legislature.ca.gov/> to search by your address.

Here is a brief summary of a few bills currently pending before the legislature that will impact you.

SB 1265 would enact a series of reforms to the laws governing elections. There are nine points to this bill, some of which include prohibiting HOA's from disqualifying members from running for the board. The bill will increase costs, subject owners' signatures to being copied by other owners and jeopardize the sanctity of the secret ballot. Contact your State Senator and to ask for a NO vote when the bill comes before the full Senate for a vote.

Another pending bill that would have had negative significant impact on HOA's is SB 721, which would have required the regular

2018 Legislative Update: continued on page 5.

HOA BOARD SEMINAR "CURRENT HOT LEGAL ISSUES"

OCTOBER 9, 2018; 6:30 PM, Pasadena

The topics to be discussed will include the following topics:

- Solar
- Balconies
- Elections
- Maintenance
- Smoking
- Collection issues
- Governing document updates vs. amendments
-and your questions



Matt Ober



Brian Moreno

Speakers:

**Matt Ober, Esq.; Richardson Ober, PC
Brian Moreno, Esq.; Swedelson Gottlieb**

Both Mr. Ober and Mr. Moreno are members of the Community Associations Institute College of Community Association Lawyers.

Those who attend will also have the opportunity to meet and ask questions of over 20 HOA vendors, and win over \$1000.00 in door prizes.

To reserve your seat, email us at "HOASeminars@bevenandbrock.com; or call (626) 795-3282, ext. 886.

Please leave your name, the name of your HOA, the number of guests who are coming, their names, and email addresses. Early registrants, prior to 9/1/18, will have the first opportunity to suggest topics for the seminar.

HOMEOWNER ASSOCIATION NEWSLETTER

How to Get a Great Reserve Study

By Sean Andersen, RS; Association Reserves, Inc.

Everybody wants a great Reserve Study. But what does that mean? Let me suggest a list:

- All the “right” components on your Reserve Component List (none missing that should be on the list, and none on the list that should be handled in the Operating Budget)
- Accurate estimates of Useful Life (UL) and Remaining Useful Life (RUL)
- Accurate estimates of Repair/Replacement costs (\$)
- An accurate projection of the starting Reserve balance (\$)
- A Funding Plan that allows for the timely repair & replacement of all the items on the Component List

If you’ve had a Reserve Study prepared by an independent, credentialed Reserve professional (a “RS” or Reserve Specialist), your Reserve Component List should only need minor adjustments annually. Even so, review that Component List in light of the following National Reserve Study Standards 4-part test. Make sure that every component on the list is:

1. A common area maintenance responsibility
2. With a limited Useful Life
3. With a predictable Remaining Useful Life, and
4. With a repair or replacement cost above a minimum threshold of significance

This will be your best way to make sure you are Reserving for all the “right” components.

Any recent Reserve projects which have been completed by the association should be reflected in your Reserve Study. Some associations maintain a “Reserve Projects” folder, where receipts and proposals are filed. This information helps ensure accurate estimates for Useful Life, Remaining Useful Life, and current Repair/Replacement costs.

If a roof is replaced for \$100,000 this year, the replacement costs in your current Reserve Study should

reflect your actual costs. If your Reserve Specialist is not informed of this expense and updates your Reserve Study showing the roof as having one more year of Remaining Useful Life with an estimated replacement cost of \$80,000, the study will not be an accurate snapshot of the community.

Both the Percent Funded and recommended Monthly Reserve Contribution calculations will be affected by inaccurate component information. Learning from the actual projects at your association is the best way to help improve the accuracy of your Useful Life, Remaining Useful Life, and Replacement Cost estimates. Providing your Reserve Specialist with a list of the associations’ vendors will allow for vital information to be passed on from vendors who have regular access to the associations’ reserve components. These vendors provide valuable information concerning the condition of, and cost to replace specific components.

An example would be a pool vendor who could provide information about a pool filter that, while not leaking and not rusting, is simply not functioning properly and needs to be replaced. The pool vendor could inform the Reserve Specialist that a different type of filter is needed and what the cost would be for replacement.

Another example would be an asphalt vendor who could provide information on the needs of the community, whether a seal-coat is all that is needed or a more substantial project like a petromat or a rebuild of the streets and driveways.

Estimating your end-of-year reserve balance requires the involvement of the Board and management. Management typically has the most recent bank statements, knowledge of any outstanding payments needed to be made from the Reserve Fund, and a realistic expectation of whether budgeted Reserve contributions will be made

through the end of the year.

It is that combination of actual balance, projected expenses, and projected income to the Reserve Fund that will ensure a realistic and accurate Fiscal Year End Reserve balance. The accuracy of this computation is essential, as it will affect the % funded calculation and possibly the recommended monthly reserve contribution.

Timing is also an important factor in the Reserve Study process. Ideally, the recommended monthly reserve contribution should be reflected in the budget. The study should therefore be completed before the draft budget is completed. For communities with a December 31 Fiscal Year End, bids for preparation of the Reserve Study should be obtained in early summer and the process started in July or August. The best case schedule scenario is shown below:

- **Jul-Aug Obtain bid for Reserve Study**
- **Sep-Oct Reserve Study is completed**
- **Oct-Nov Budget is approved**
- **Nov-State Disclosures are sent distributed**

This schedule allows the management and board to review the study and request possible revisions. The worst case scenario is that the association needs a reserve study and is frantically seeking bids in early November. That situation will lead to the reserve study being expensive, rushed, and possibly too late to be utilized in the budgeting process.

Finally, what makes a great funding plan? National Reserve Study Standards require a funding plan be based on four principles:

- that it provide adequate funds when needed
- that it provide budget stability from year to year
- that it fairly distributes the contributions among the owners, over the years, and

*How to Get a Great Reserve Study:
continued on page 6.*

HOA Homefront - Ten Tips For Shorter Meetings

By Kelly G. Richardson, Esq. CCAL



Board meetings require balance. While nobody appreciates a meeting in which brevity is the only value, unduly lengthy meetings discourage and exhaust everybody - directors, audience and manager. After about 3 hours, good concentration and judgment is hard to come by. A length of 60-90 minutes is a very reasonable and achievable goal for most board meetings. Try these tips to get there.

1. Come prepared. Good managers provide boards with "board packets" in advance, helping directors come to the meeting prepared, avoiding time wasted as directors "get up to speed" about items set forth in the packet. Prepared directors are more efficient - read your packet.
2. Avoid overly ambitious agendas. Watch out for the overly loaded agenda. Some issues can dominate a meeting, requiring thirty minutes or more. Try to handle only one such issue per meeting, if you can. Sometimes a board needs to meet more frequently, as there is too much to be done in one meeting.
3. Set the room up for a board meeting (not a town hall meeting). A board which sits facing the audience (and not each other) invites audience participation, but the audience was not elected to serve. The semicircle is the best shape, so the audience can hear as the directors talk - to the other directors.
4. Use open forum properly. Many meetings are too long because both board and audience fail to respect open forum. During open forum the board should not interrupt, and during the rest of the meeting the audience should not interrupt.
5. Use consent calendars. Most routine decisions should be handled via consent calendar. Assessment liens, routine bills, and other non-controversial matters can then be passed with no discussion and one vote. Any director desiring discussion can pull an item from the consent calendar

6. Don't force unanimity. Some excessive deliberation results from over-emphasis upon unanimity. Unanimity is not legally necessary, and puts too much pressure on directors who wish to disagree. Disagreement is not disloyal. Unanimity is important only on very important subjects on which the community needs to be shown strong board support.
7. It's okay NOT to speak. Part of the art of being a great board Chair is recognizing when there is a consensus and it is time to vote. Part of the art of being a great director is recognizing when a motion is clearly on its way to passage so no further remarks are necessary.
8. Use committees. Major topics can be researched, analyzed and discussed in committees or task forces which then recommend action to the board. Committees are also a great place for members to become involved, and to identify potential directors.
9. Keep on track. The Open Meeting Act requires that the board only discuss items which were disclosed on its agenda. Other spinoff discussions are often tempting, but that is not fair to the members who did not know it would be discussed and distracts from the agenda at hand. Stay on target.
10. Adopt meeting rules. Meeting rules educate members regarding meeting procedures, set behavior boundaries, and help curb disruptive behavior. Adopt meeting rules (and follow them!).

A one hour meeting is a good goal. Try hard to avoid exhausting three hour meetings. Efficient meetings are worthwhile, and will encourage others to take their turn at future board service.

Kelly G. Richardson CCAL is Managing Partner of Richardson Ober PC, a law firm known for community association advice. Send questions to KRichardson@RHOPc.com. Past columns at www.HOAHomefront.com. All rights reserved®. ❖

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Can't We All Get Along?

After a decade of providing thousands of third party *unbiased* election services to homeowner associations election inspection companies have learned to expect the unexpected, or as Farmers Insurance says, "we know a thing or two because we've see a thing or two."

Only recently, has there been a sharp increase in the number of recall elections for HOA's. Today, it is common to have one in process all the time. Even though an entire board, or a portion of the Board, is usually up for reelection every 12 months, some folks just do not seem to be willing to wait.

A typical time frame to complete a recall election is approximately two months. Given the cost and headache of a recall election, it may make better sense to wait until the next annual election. The costs of a special election may also involve your attorney as calculating the formula of how votes are counted in your documents is usually complicated.

Although it typically takes at least 25-51% of membership to vote in a board election, it only takes 5% to force a recall under the law. This very small minority of the membership creates an expense, both economically, and to the sense of community that all members have to bear.

People are people and perhaps certain recalls are inevitable, but maybe *some* recalls could be prevented if:

- ▶ Members got more involved in their community and attended

at least one or two board meetings each year, joined a committee, or ran for the Board.

- ▶ Board members spend more time meeting and communicating with their neighbors.
- ▶ Members take the time to read the information they receive, especially the budget and reserve study and ask questions about things they do not understand.
- ▶ Board members use tools such as newsletters or email blasts to frequently communicate with the membership to explain their decisions and the reasons behind them.
- ▶ Members invest a little more time and more thoroughly vet all the candidates before voting?
- ▶ Boards send out informal surveys to the membership to get their input on certain major issues.

There are always two sides to a story. It is easy to identify with only perceptions that line up with your feelings. However, non-adversarial communication and diligent understanding are the best ways to avoid or resolve conflicts before they escalate and become very expensive.

And as Rodney King said, "Can't we all get along?"

By **Tommy Ouzoonian**, President of Majority Rules, an election inspection company. He can be reached at majority_rules@sbcglobal.net. ❖

INSURANCE: Why A "Unit Owner Policy" Is Important!

Condominium owners will often rely on the Association's master policy to protect them on any potential loss they might have. Unfortunately, owners who do may be disappointed to learn after it's too late that the HOA Master Policy does not cover quite everything. It is true that the "unit owner policy", also known as a "HO-6" policy is a great value but is often not

purchased.

In the case of interior damage in your condo that is the result of a plumbing or roof leak, there may not be coverage under the Master Policy for the repairs required in your condo depending on the type of coverage the association carries. Some policies, commonly identified

Insurance: Why A "Unit Owner Policy" Is Important!: continued on page 5.

inspection of decks and balconies by a licensed individual. This bill was in response to the Berkeley balcony collapse in June of 2015, which killed six young adults and injured seven others. The new law would require associations to have an architect, civil engineer, structural engineer, or independent certified building inspector inspect balconies and any other “elevated exterior element” once every six years, with the first inspection to be completed no later than January 1, 2024. At press time, we received some very good news that CAI-CLAC scored a major victory on SB721. Senator Hill agreed to amend his bill in the Assembly Business and Professions Committee to delete Section 2 of the bill, which pertains to Common Interest Developments. With that amendment, the bill passed on a unanimous vote. The success was made possible by the effort CID owners throughout the state made by contacting their local legislators to voice concerns about how the bill would impact homeowners.

There is some other good news that may come from this legislative season, and that is SB 1128. This bill makes a slight reduction in the number of days that the HOA must wait for a proposed rule change from 30 to 28. Most importantly, SB 1128 will provide that the

nominees to a board shall be considered elected by acclamation if the number of nominees does not exceed the number of vacancies on the board. This bill appears to be on track to pass this session.

To read more about each bill, visit: <http://leginfo.legislature.ca.gov/>.

There is an organization that is fighting for your interests in Sacramento, the California Legislative Action Committee (CLAC) which is a committee of Community Associations Institute (CAI). CLAC employs a lobbyist who testifies at hearings and educates the legislators in Sacramento. CLAC is funded by donations, and your association can make a donation to the their “Buck-a-Door or More” campaign. Donations can be sent to 1809 S Street, Suite 101-245, Sacramento, CA. 95811 with checks written to CAI-CLAC. You can learn more about this organization at <https://caiclac.com/>.

Finally, Beven & Brock is establishing a “Red Alert” system for HOA owners to voice their support for or against legislation on short notice. If you are willing to be contacted by email to voice support or opposition to legislation that is in the final stages of voting, you may write us at HOANewsletters@bevenandbrock.com to be added to the list. ❖

Insurance: Why A “Unit Owner Policy” Is Important!: continued from page 4.

as “bare walls” policies, will not cover damage to your fixtures, such as cabinets, flooring and wall coverings. The “walls in” coverage does provide this coverage. Some HOA boards while attempting to save costs will unknowingly purchase the “bare walls” coverage and not realize that the coverage is inferior to the policy they are replacing.


All owners are strongly encouraged to purchase an owner’s policy, called HO-6. The “owner’s policy” will cover claims such as injuries that occur within your condo, and will pay for interior repairs to your unit, including your damaged personal property, none of which is covered by the Master

Policy. The HO-6 policy is important in both cases, however it is much more critical when the association carries the “bare walls” coverage. Lenders may require the HO-6 policy as well when the associations insurance is insufficient, in their view, to protect their risk.

Some associations have a policy that requires the affected owners to pay the deductible for a claim relating to the common area that impacts their unit. The HO-6 policy would pay the large deductible cost, and the owner would pay a much smaller deductible for the HO-6 policy to pay the loss.

Another important feature of the HO-6 is “loss of use” coverage if you must live elsewhere

Insurance: Why A “Unit Owner Policy” Is Important!: continued on page 7.



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² The interest rate and annual percentage yield may change after account opening. These rates are only available for AAB customers and community associations.

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The Antidote for CONFLICT!

Any more it seems that an HOA without conflict is a thing of the past. More and more associations are experiencing challenges of in-fighting among owners, or between board members. The existence of conflict also creates another reason why some owners are unwilling to serve on the board which creates other potentially serious issues.

The only interaction that owners in HOA's typically have with each other has to do with the business of their association, and much of that is about issues that easily lead to conflict: finances, repairs, rules, fines, security, and more.

Culturally, America has seen a significant decline in interaction among neighbors over the past 40 years. Our homes are closer together than they ever were in the 1960's yet, the interaction we share in as neighbors is far less now that it was then.

In a 2015 article entitled, *Why Won't You Be My Neighbor?* the author Linda Poon stated that, "few Americans today say they know their neighbors' names, and far fewer report interacting with them on a daily basis."

"There used to be this necessity to reach out and build bonds with people who lived nearby," says Marc Dunkelman, a public policy fellow at Brown University who studied the shift in American

communities for his 2014 book *The Vanishing Neighbor*. He states that was particularly true in the 1920s through the 1960s, when social tension ran high due to issues like the Great Depression and the Cuban Missile Crisis. Things have changed. Dunkelman hesitates to give any one reason, but his working theory is that Americans today have *limited social capital*—time and attention—and more ways to spend it now. "The reason, in many cases, that we were connected with our neighbors was because we couldn't avoid it, we couldn't get along without it," he says of the past. "We're now able to be closer in touch with the people we love most."

Technology has changed the world significantly. It's not that we are making an active decision to **not** talk with our neighbors. We just prefer to spend our precious time texting friends, Skyping with family, chatting on online forums, or spending time alone watching Netflix.

The reasons for neighbors interacting is different today than it was in 1960. However, interaction is still important and necessary in HOA's. The issues that should bring owners into relating as neighbors have to do with their mutual investment, security of their property and curb appeal.

The concept of a *vibrant*

community that interacts in healthy ways must be viewed as something worth pursuing. **The best antidote would be to make it a point to find ways to gather the community in a non-threatening, social and fun environment.** In this gathering there should be no agenda other than eating, drinking and getting to know your neighbors. Leave the association business for another time and place. Everyone likes to eat, and drink. Make it a pot-luck with the sharing of a common meal.

It is unlikely that you will get everyone to attend as some people would rather watch Netflix. No problem, whoever comes is a great start. Those who come will appreciate the fact that the board initiated this event. By the way, invite tenants as well. This is not a time to distinguish between owners and residents. They are a part of the community too.

When should you do this? NOW! Summer is one of the best times of year to get people out. The other prime time is the holiday season. Have a gathering between now and mid-September.

Sharing in a common meal with your neighbors will pay off in the future. It is possible that fewer conflicts in your association will increase value and potentially save some legal expenses in the future.

❖

How to Get a Great Reserve Study:
continued from page 2.

- that it be fiscally responsible.

These principles ensure that the Funding Plan is not based on the expectation that future owners will carry more than their fair share by burdening future owners with a special assessment for assets that deteriorated well before they became owners in the association.

A great Funding Plan also does not recommend reserve contributions that are too low to be sustainable, favoring current owners. Ideally, Reserve contributions should correlate to the current rate of deterioration of the Reserve assets - effectively offsetting their ongoing deterioration. In this way,

current owners fairly pay for the deterioration of the common areas they are "using up" during the time they own a home at the association.

There should be an anticipation that the Reserve Contribution will increase annually. The desire not to increase dues is understandable, but should not be confused with the needs of the association.

Unfortunately, \$300 a month is not worth what it was 15 years ago. If increases have not been made over that 15-year period, the association has been taking steps backward as the value of the dollar decreases. Further, historically low interest rates earned on Reserve funds does not help to offset inflationary increases.

The above principles require the involvement of the experienced reserve study professional, the association board, and management. A "great" reserve study is the result of refinements year after year, so that it accurately reflects the current physical and financial state of the association, and provides accurate budget guidance to the board and management.

Sean Anderson, RS. is with Association Reserves. Their website has many articles that provide more information on the topic of reserves. Check it out at www.reservestudy.com. ❖

Quick Tips For HOA Leadership Success!

HOA Board leadership can be a challenging and frustrating job for many. However, it doesn't have to be. A board that operates by a set of operating protocols can make the service to your association very efficient and productive and possibly enjoyable.

Meetings

1. Board meetings: hold consistently and regularly, no less frequently than quarterly.
2. Annual meeting - start planning 60 days ahead.
3. No discussions or decisions by email.
4. Notice and Agenda - must be posted 4 days in advance
5. Transparency - encourage and consider owner input on major issues
6. Executive meetings - know when they are appropriate.
7. Healthy disagreement is fine, but when the vote occurs, that is the Board's decision.
8. Owner Forum: set reasonable time periods and listen. Don't respond.

9. Minutes are a record of decisions, not a transcript of the discussions.

Governance

10. Understand your role as a "director". You are not the on-site manager. You are not a board member 24-7. You are a volunteer with a life outside the association.
11. How you model board service will determine if you will have future board volunteers. If you are overly involved and responsive, no one will ever want to be on the board.
12. Operate with fairness to all owners, regardless of who they are.
13. All board members should

have a defined role to spread out the workload.

14. Don't assume you know everything - take advantage of education for boards.

15. Be reasonable in creating rules and follow the mandated legal process.

16. Realize that there are always "two sides to a story".

17. Understand that this is a business - don't make it personal.

Maintenance

18. Rely on experts to avoid liability.

19. Use only licensed and insured vendors.

20. When obtaining bids, communicate to vendors by written specifications.

21. Don't permit deferred maintenance.

22. Price and quality of work are usually mutually exclusive.

Community

23. Create two annual informal social events for neighbors/owners to get to know each other.

Financial

24. Review financial statements at least monthly, especially the budget comparison report.

25. Know who hasn't paid and take appropriate action by 60 days.

26. Approve your payables promptly.

27. Fund reserves every year

Disclosures

28. Don't neglect the annual disclosures - they help to protect the association.

29. Reserve Study: every year either update or renew your study.

Insurance

30. Work with an agent that

specializes in HOA's.

31. Meet with your agent once a year to make sure you have proper and adequate coverage.

32. Obtain worker's compensation insurance.

33. Strongly recommend, if not require, owners to obtain an owners policy, called the HO-6 policy.

What is important in HOA leadership that you have found that is not on this list? Let us know at HOANewsletters@bevenandbrock.com and it may be added to the list.



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Insurance: Why A "Unit Owner Policy" Is Important!: continued from page 5.

temporarily because your property is uninhabitable from a covered loss. This type of coverage is not provided in the Master Policy.

Finally, for any loss that exceeds the limits of the Master Policy, the association may be required to impose a special assessment for losses due to major damage to

structures, or a liability loss which is not fully covered by insurance. The "HO-6 Loss Assessments Coverage" will pay this type of special assessment.

For more information on the HO-6 policy or HOA master policy insurance, contact John Sinner at (626) 576-1078, or by email at: john.sinner.b8h5@statefarm.com. ❖



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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.

Upcoming events:

October 9, 2018: 6:30 to 8:30 PM.
HOT LEGAL TOPICS

See first page of this newsletter for more information.

October 23, 2018:
Board Training

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 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 due to space limitations.



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