



BEVEN & BROCK

NEWS & VIEWS

for Homeowner Associations

April 2019

HOA Laws Affect Small Associations Harder!

In 2018, the *Community Association Institute's California Legislative Action Committee* (CAI-CLAC) fought hard to win the Governor's veto on a bill that would have threatened homeowners' privacy and would have made other fundamental changes to the way associations conduct their elections.

In a statement from Governor Brown, upon vetoing this bill, he stated:

"This bill makes several changes to the elections process for homeowner associations within common interest developments. California has over 50,000 common interest developments varying in purpose and size. Each one has governing documents that are tailored specifically for that individual community. This bill takes a once-size-fits-all approach, but not all homeowner associations are alike. If changes to an election process are needed, they should be resolved by the members of that specific community."

With the veto of SB1128 and SB1265, Governor Brown recognized that a "one size fits all" approach doesn't work for community associations in California.

In Los Angeles county, the average association size is 30 units, with 68% of the common-interest developments statewide containing 50 or fewer units. It is no mystery that smaller-sized associations face challenges

HOA Laws Affect Small Associations Harder!: continued on page 6.

FREE HOA BOARD SEMINAR & VENDOR EXPO!

FRAUD IN HOA'S & PROTECTION OF FUNDS



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6:30 - 8:30 PM

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This seminar will address the new 2019 law regarding financial oversight requirements for boards of HOA's and explore the applications as well as examine the implications of Assembly Bill 2912

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- Three primary aspects of the new law.
- Real HOA embezzlement stories
- How do boards comply with this law?
- How to review your financials and document that!
- What are the red flags for possible fraud?
- Vendor Kick-backs: how to recognize.
- How to have Transparency in financial dealings
- What if you suspect fraud?
- Petty Cash & Credit Cards – Good idea? Bad idea?
- Does an annual review help find fraud?

RESERVATIONS REQUIRED!

DESSERT AND DRINKS PROVIDED

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FEATURED SPEAKERS:

KELLY RICHARDSON, ESQ.

Kelly G. Richardson is co-founder and principal of Richardson Ober. In practice since 1983, Mr. Richardson is a veteran business trial lawyer who has established himself as a true leader in the field of homeowners association and real estate law.

Mr. Richardson is a Past President of the national Community Associations Institute, and a member of the distinguished College of Community Association Lawyers.

TIM BRADLEY, CPA

Timothy Bradley, CPA has been a provider of tax and financial review services exclusively for HOAs since 1987 and currently provides these services for hundreds of Associations.

Mr. Bradley estimates that he has prepared in excess of 50,000 association tax returns during this period and has never had one audited. Further, he has received a pass rating on all peer reviews as administered by the AICPA Peer Review Program.

Mr. Bradley is a proud graduate from the University of California, Berkeley.

DAVID BROCK, PCAM

David Brock is President of Beven & Brock Property Management Companies, Inc. which has managed common-interest-developments since 1985.

Mr. Brock earned the highest designation available in the county, the "Professional Community Association Manager" designation in 1990.

Currently, he oversees a staff of twelve certified managers which manages approximately 8000 units in northern Los Angeles County.

HOW TO REGISTER:

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Please include your name, the name of your association, and the number of guests you will be bringing - including yourself

DISCLAIMER: THE CHURCH OF THE NAZARENE, WHILE PROVIDING THE FACILITY WITH REIMBURSEMENT, IN NO WAY SUPPORTS OR ENDORSES THIS ACTIVITY.

How to get the most out of your Association's Vendors

By Roman Esparza



Boards can often be at odds with their community's Landscape Company, roofing company, pool man, or lighting company, and the list can go on and on.

Often time's troublesome issues are a result of poor communication, knowledge and expectations, or lack of follow through with either the vendor, the management company, or even the Board.

In order to get the most out of your Association's vendors here are some tips your Board of Directors can use when dealing with some of the most important assets of your community:

Be sure you are always working with licensed and insured vendors or contractors. There are over (43) different types of contractor's licenses required for businesses performing work over \$500 in the state of California. Contractors must have the proper type of license required for the work or trade in which they are doing business. For instance, a roofing company must have a (C39) License to do any roofing work in California. In addition, a landscape company must have a (C27). Did you know there is a separate license required specifically for Tree Trimming (D49), and Pool & Spa Maintenance (D35). Be sure your vendors are licensed for the specific work in which they're doing business. Problems can be avoided sooner if you are working with a vendor that has the proper license.

A properly licensed and experienced contractor can usually be considered to be somewhat of an expert in his field. Therefore, his thoughts and opinions about certain construction projects in the HOA should be given more consideration than an un-licensed contractor should in the same field. Of course, you need to keep in mind that the properly licensed contractor may not always be the lowest bid when pricing work from more than one vendor. Always make sure your licensed contractors

maintains current liability and worker's compensation insurance.

Build a relationship with your vendors. Boards can get more out of their vendors when there is a relationship in place with the actual person proving the service to your community. These service providers need leadership and strong guidance. Even though they may know how to cut grass, trim trees and clean pools they still need your thoughts and questions about how these things are being done in order to better understand the quality of service expected and the costs involved. Meeting with your vendor occasionally is usually much easier than making a change or receiving less than good quality service and performance.

Have only ONE person designated as your landscaper liaison, pool person, or roofing coordinator that the vendor can communicate directly with, and answers too on behalf of your community. Often times the vendor is being given direction, by multiple people within the community, and this leads to poor quality of service, long delays and bitter feelings by those whose instructions and expectations are not met. It is usually a good idea to have your manager be that lead person. However, in some cases, it may work out better and be more time efficient, if the primary liaison is an on-site Board member, or committee person designated by the Board to give instructions to the vendor on behalf of the Board and the Association.

Always be upfront with your vendors. Tell them when they are doing a great job and they will appreciate your compliments and continue to work hard for you and will do their best to keep your trust and confidence in their work. In addition, explain to them as soon as possible, whenever their services are not meeting the Board's expectations.

Finally, after the vendor's services have been provided, be sure to pay your vendors promptly, and on time. Payment for services may be expected right upon

completion for most work, however some contractors will allow up to 10 or even 30, days for payment to be made after services have been provided. Your prompt payments will help to keep your vendor's business running as smooth as possible, and this in turn should help maintain their highest level of quality customer service for your community.

Overall, Boards should always try to work with only qualified vendors they know and trust. Making sure your vendors understand fully the level of quality service that is expected from them by the Board, before they start any work will help to avoid problems later on. Ask your vendors to be proactive, and let the Board know of any potential problems before they happen. In addition, ask them to assist the Board with any long range planning necessary for your community.

Good communication and instructions between the community manager, and your community liaison, will help keep the level of service to your community as high as possible. In addition, will make the Board look great to their members, and will help to keep the community looking its best!

Roman Esparza of Beven & Brock Property Management in Pasadena, CA is a member of CAI and has been managing homeowners associations for over 20 years. He is a professional in the field of Homeowners Associations, Mixed Used Developments and Multi-Dwelling Units. He can be reached at Roman@bevenandbrock.com. ❖

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In Appreciation of HOA Board Volunteers!

National Volunteer Week, which is designated for April 7-13, 2019, is an annual celebration observed in many countries, to promote and show appreciation for volunteerism and volunteering. In the United States it is organized by the Points of Light foundation. ***In my view, HOA Board members are the best volunteers of any as they live in the community they serve.*** Thank you to all HOA board members who work diligently to serve their community, without pay, or appreciation.

Most, if not all, board members are concerned about who will replace them, or serve alongside them. Every year, it seems, the choices are less than the year before.

Why don't people agree to serve? We have all heard the excuses:

- "I am too busy with my job."
- "I travel too much."
- "My personal life is too demanding."
- "Someone else will do it."
- "All the Board does is argue and fight."

The excuses are sometimes valid, but often miss the point that service on an HOA Board must be done by fellow owners, and to NOT SERVE places an unfair burden on the owners are do agree to serve.

Why do owners say "yes" to serving on the Board?

- To protect their investment.
- To understand how decisions are made.
- To get to know their neighbors.
- Because no one else will serve.
- Because they have a personal agenda, which may not coincide with the best interests of the association, such as to reduce assessments or change the rules.

Board members do get tired and burn out. The best practice for HOA leadership is a gradual migration of owners coming on and going off the board. Abrupt changes, either board members resigning between

annual elections or in mass when the election occurs, causes chaos in the community. Continuity of board members is a critical element.

Owners who do not serve, or even vote, are putting their trust in people who they don't know to represent them and their interests. The big question that every board member wants to know is ***"How do you get owners to serve on the board?"***

One challenge that exists in HOA's is that the boards role is perceived as authoritarian, and sometimes tyrannical. This perception may be due to the fact that the most interaction the board has with owners is in establishing and enforcing rules, increasing the assessments, or proposing a special assessment periodically. How can boards overcome this negative perception?

While it is true that the board is in charge of the association, being perceived as authoritarian does not convey the whole picture of what a board is about.

How can the board change this perception?

1. Develop a strategy to get to know your owners so that it is communicated that "the board" is not the despot of the association. This may include the following:
 - a. Welcoming new owners in the community. New owners are usually excited about their new home, and would appreciate being acknowledged.
 - b. Annual or semi-annual gatherings of residents over food and drinks. There is nothing better to break down walls between people than sharing a meal.
2. Learn how to communicate the positive issues in the community as well as educate the owners on the importance of the decisions that must be made that may be unpopular but are necessary for the good of the whole community. This is particularly true for issues that may become

controversial. Don't be afraid to invite input from those with whom disagree.

- a. Being diligent to post meeting agendas that indicate what the board is discussing.
 - b. Welcoming owner input at open board meetings. The open forum portion of the meeting is the best opportunity for this.
3. Operating all meetings in a civil and business-like manner. Disagreement is inevitable, but allowing the disagreement to become personal is not the best way to handle this challenge.
 4. Model great behavior as board members so that future boards will follow your lead. Establishing a culture in your community of mutual respect, despite disagreements, will change the dynamic significantly.

Finally, what makes a great volunteer?

1. Understand that you serve for the benefit of the organization, not just for yourself. It is challenging to some people, but not impossible, to learn how to wear two hats. It is necessary to separate your "homeowner" hat with your "board member" hat. This is essential.

2. Keep your objectivity and do not get emotionally involved. Civil discourse is always best. It's never good when we let our feelings rule and let objectivity go out the window. Listen and try to understand all sides before making decisions. It has been said that there are always two sides to every story. Some say there are three: your's, mine and the truth.

3. Be reasonable and fair to all owners, especially the ones you will probably never agree with or choose as your friends.

4. Communicate to owners on important issues, specifically those that will impact them directly.

5. Take advantage of learning opportunities: Newsletters,

In Appreciation of HOA Board Volunteers! continued on page 5.

Special Assessment Guidance



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Special Assessments may just be the “dreaded curse” for HOA’s. They are *hated* by most everyone, but one may be inevitable, and in your future. *Special assessments* are necessary when an association does not have sufficient funds in reserves to handle a large project, or in the case of an unexpected emergency such as a major plumbing issue. The failure to fund reserves, over years and years, is the most common reason why a *special assessment* is needed. If the required reserve study was completed, and a special assessment is now required. Following the advice of your reserve study expert is the best way to avoid a *special assessment*.

However, if you find it necessary to have a *special assessment*, diligent planning is essential to be successful. To need a *special assessment*, and fail to get the required votes to pass, places the association in a difficult position. It is possible to greatly increase your chances of success by following the advice presented below.

First, it is important to understand that a successful special assessment takes time, and it cannot not be rushed. Remember, that to be successful in this process you will need to complete some thorough research. To rush the process may likely ruin your chances of success. Depending on the amount of money to be raised, the process may take three to six months or longer.

Next, determine the type of special assessment you will need.

One responsibility and part of the Board’s decision process is to determine if this is an “*emergency special assessment*” as defined by the law. The qualifications for an emergency special assessment are that the required expenditure is unforeseen. If this is an *emergency special assessment*, homeowner approval is not required, but the Board should be very careful in making this determination. It may be necessary to consult with an HOA attorney in this process to be sure that your determination of deeming it as an “emergency” is appropriate.

If this does not qualify as a *special assessment*, you may be able

to impose a special assessment, without an owner vote. If the amount of money required is not a large amount, the law provides for a special assessment if the assessment does not exceed 5% of the annual budget. This amount is not significant and rarely meets the need.

If you do not qualify for either of these scenarios, you will need to undertake the process to put the proposed *special assessment* to a vote of the owners. In these cases, you will need to proceed with research and study.

The second phase involves research and study:

- Identify the project(s) that need to be accomplished.
- Have you obtained specifications for bidding?
- Have you obtained bids?
- Can the project be staged so that the costs can be spread out over time?
- Did you include the cost of an outside consultant who can review bids and monitor the job?
- What factors exist that may cause the price to increase?
- An important element of the discussion is whether the board will allow payment plans, and if so, over what period of time? Allowing payment plans is dependent on the work schedule and the vendor requirements for payments and it will likely help in gaining owner approval when the vote takes place.
- Is a HOA loan possible? A loan may help owners vote in favor if they know that this can be arranged.

The third phase is board discussion and owner input.

After gathering the necessary information, the board is required to meet and discuss options and strategies as to whether to proceed. The board is strongly encouraged to discuss the need of the *special assessment* and the results of the research in an “open board meeting” as soon as possible. It is important that the posted agenda and the minutes reflect the fact that the board is discussing this issue.

*Special Assessment Guidance:
continued on page 5.*

*Special Assessment Guidance:
continued from page 4.*

This is important so that owners are aware that a *special assessment* is a possibility, which is important for several reasons:

- a. An owner who is in the process of selling their unit, or plans to in the near future, must disclose the potential of a *special assessment* to a prospective buyer. Buyers are also advised to read the minutes of board meetings. If this is properly recorded, it must be disclosed and may become an appropriate point of negotiation in the sale.
- b. Open Forum: If the board has done its job and posted this issue on the agenda, then owners may show up at the meeting either to either learn more, and/or to offer their perspective on the issue. While some boards view owner input negatively, it should be viewed as an opportunity to educate and influence owners to vote in favor. Boards who listen and acknowledge owner input will be better off in the long run.

The fourth phase is the voting on the special assessment.

Once the board has researched, discussed, educated, and listened to the owners it is time to vote on moving forward. In order to avoid challenges some associations will use an attorney to draft the ballot for the election.

An issue that the board may want to include in the ballot is whether or not to require owners who sell to pay off the assessment, and if you are allowing a payment plan and the terms of payment. Some owners may be able to pay off the assessment immediately, and it may be fine to charge owners

a slightly higher amount for the convenience of payments. Confirm this with your legal counsel.

The election needs to be held in accordance with the requirements of the election law that governs homeowner association elections which has been in effect since July 1, 2006. Generally, it takes about 45 to 60 days for an election to occur.

During the period prior to the actual vote, the owners will need to be educated about the *special assessment*. An informational or "town hall" meeting is not required by law but will be helpful in gaining approval from the members. Whether or not a meeting is held, the following information should be made available:

- What is **the purpose** of the *special assessment*?
- The **total amount** required to fund the *special assessment*.
- If a **vendor** has been selected to do the work, it may help to have the **vendor** available to answer questions regarding the work and process of the job.
- **Amount to be paid** from the HOA Reserve Account (if any)
- Total amount due from each unit, either as a lump sum or payment plans. If a payment plan is allowed, what payment terms are available?


Finally, assuming that the *special assessment* is approved, and if the work doesn't commence immediately, it is best to deposit the *special assessment* funds into a separate "reserve account" each month so as to protect those fund for the designated project.

In closing, we hope that you never have the necessity of a *special assessment*, but if you have to, following these guidelines will increase your chances of success. ❖

In Appreciation of HOA Board Volunteers!: continued from page 3.

seminars and web-sites. If you agreed to serve, why wouldn't you want all the help you can get. Help comes in the form of HOA industry professionals such as lawyers, CPA's, certified managers, plumbers, general contractors, etc. Sadly, only about 10% of board members actually take advantage of free seminars.

In closing, HOA governance is NOT a spectator sport. Every owner has a vested interest in the health of the association, whether they are an absentee or on-site owner. Thank you for your **leadership** and **service** to your community. May you find new ways to encourage a greater spirit of volunteerism in your association. ❖



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The Truth About Toxic Mold

By Kelly G. Richardson, Esq. CCAL

In 2000, a new “toxic mold” panic swept the country, and nineteen years, untold lawsuits, and billions of dollars later, major myths about mold still plague and unnecessarily panic association boards, managers and homeowners. These myths all too often cause exaggerated repairs, unduly frightened residents, and conflict. Here below are thirteen of the most pervasive *myths*.

Mold is new. Mold, one of the earliest and simplest life forms, has existed for thousands of years. Almost a hundred years ago, mold was the basis of the discovery of penicillin. Mold is ever-present, as is dust or pollen.

The scientific and medical communities confirm mold’s many dangers. In 2004, the National Institute of Medicine published its comprehensive study on indoor mold exposure, called “Damp Indoor Spaces and Health.” A central finding was: “Scientific evidence links mold ... in homes and buildings to asthma symptoms in some people with the chronic disorder, as well as to

coughing, wheezing, and upper respiratory tract symptoms in otherwise healthy people... However, the available evidence does not support an association between



... mold and the wide range of other health complaints that have been ascribed.” That sounds like mold presents the same danger as dust or pollen – to people with severe asthma. The announcement containing this finding is easily located by a web search, but it did not receive much press play – stories of frightened people living in tents are more interesting.

One must determine the kind of mold present. Mold consultants and plaintiff attorneys often describe some molds as worse than others. The most famous mold is *stachybotrys chartarum*, a mold producing infinitesimal quantities of a substance similar to botulism poison. However, the

*The Truth About Toxic Mold:
continued on page 7.*

HOA Laws Affect Small Associations Harder!: continued from page 1.

that are not faced by associations of 100 units or more. A common example of this is the challenge in getting owners to serve on the board. Another example is the onerous election law that requires associations to comply with the same rigorous provisions that are required of all associations, regardless of size.

At Beven & Brock, we want to provide a way for the small associations to have their voices heard.

We would like to hear your story about the specific challenges you face in your community to meet the requirements of the law. We would like to know the following:

- 1) Which laws do you find to be both difficult and unnecessary in your small association? Please be specific in your description of these.
- 2) Why is the law(s) you mentioned in Question 1 difficult for your association? In your response to

HOANewsletter@bevenandbrock.com, please include your name, zip code and the number of units in your association. We will be conveying your thoughts to your state representatives.

We understand that for many small associations a choice is made to simply not comply with the law. That decision, while well-justified, may prove to cause more difficulty in the future. More often than not, there is usually at least one owner in every association, who challenges the board whenever possible.

Unfortunately, Senator Wieckowski (D - Fremont) re-introduced the bill vetoed by Governor Brown in September 2018 as Senate Bill 323 and it appears to be identical to the legislation last year. This bill threatens privacy in homeowner association elections. We will provide more specific updates on SB323 in our next issue. The restrictions on HOA elections, if this bill is passed, will be broad and over-reaching.

Stay tuned for updates as to how you can make your thoughts known on this and other legislation in the near future. ❖



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amount is so small they call it 'mycotoxin'. It sounds frightening, but the scientific community long ago debunked the myth that this or any mold was somehow poisonous to breathe. For example, read the National Institute of Health Fact Sheet on Mold, found at www.niehs.nih.gov.

California is protected by the Toxic Mold Protection Act of 2001. The "Toxic Mold Protection Act of 2001," found at Health and Safety Code 26100, instructed the Department of Public Health to develop Permissible Exposure Limits of the various mold strains. However, in 2005, and again in 2008, the DPH reported that the task could not be completed with the scientific information available. Consequently, there is presently no official standard as to how many mold spores of any given variety are "unhealthy". Given there is no standard, what is the importance of a count of spores of a given variety of mold? Without a standard, the results of the test are meaningless... except for the frightening effect this disembodied data has upon residents.

Always start with a mold test. The Environmental Protection Agency recommends against mold testing. There is no standard as to how many mold spores are "unhealthy," and indoor air sampling tests are extremely susceptible to events in the home substantially changing the results. A recent shower, window opening or carpet cleaning are some of the many factors which can completely change test outcomes in just a few minutes.

Mold tests, bluntly, primarily frighten the occupants and purport to create a "need" for the expense of a mold consultant performing a

second test after the area is cleaned. Since the health authorities have not confirmed any particular strain is more dangerous, and since there is no official standard as to how many airborne spores are unhealthy, there is rarely a good reason to spend the money on mold tests.

You cannot clean up mold on your own. Many mold consultants treat mold as if it were asbestos or even poison (the label "toxic" helps reinforce the misleading and frightful impression). Asbestos is truly dangerous. Unlike mold, if it is inhaled into the lungs, the body cannot absorb it or break it down, and lung cancer is a possible result. But mold consultants typically develop repair protocols which are virtually identical to asbestos protocols. Several trade organizations have created mold credentials and their own cleanup protocols. On the other hand, what is the EPA's cleanup recommendation? The EPA says that cleaning up a moldy area of up to 9 square feet requires simply a cloth dampened with a diluted bleach solution.

The EPA and California Department of Public Health always recommend mold consultants. They do not. In fact, minor mold situations, they say, can be handled by the resident or with janitorial staff.

Mold consultants are licensed. Mold inspectors or consultants are not licensed by the government, but instead hold credentials and memberships in trade organizations. These are not "official," except within the trade organization's own membership.

Mold cannot be caused by the resident. Mold accumulation can often be caused or worsened by a lack of proper ventilation. Mold can accumulate in stuffy bathrooms or any area where the environment is humid, warm, and poorly ventilated. Before the mold scare started in 2000, with the new term "toxic mold," people encountering black mold in shower or bath enclosures would simply wipe it off with a cleaning solution.

Insurance never covers mold. Partially true: Property insurance policies do not normally cover mold, fungus or dry rot. If a water damage incident occurs, and the damage is not discovered and ventilated soon, mold can result (and dry rot). The

property insurance will normally refuse to cover the cost of mold remediation, but will still typically cover the rest of the repairs. However, if the property owner is sued because of water damage including mold, the liability part of the policy ordinarily will defend the claim.

Let the emergency contractor do everything. Because of the panic associated with mold, the normal reaction is to call emergency services contractors. Such contractors are much more expensive, because of their readiness to respond almost immediately at any hour. Stopping water leakage and drying the space might require an emergency contractor, however, sometimes a plumber might be enough. Emergency contractors sometimes destroy walls and cabinets before the association can obtain a second opinion as to its necessity. Allow demolition only of what is immediately necessary, and then seek bids for the non-emergency work.

Keep demolishing walls until you find no mold. Panicked residents often ask a landlord or HOA to open walls to look for mold. However, this is almost always a waste of money. If it is inside the wall, it is probably not bothering or affecting anyone - so opening up the wall may waste money (and possibly release more mold into the air).

Mold damage situations must cost at least \$10,000 per occurrence. The cost of repairing water damage skyrockets due to unnecessary mold tests, unnecessary consultants, delay in responding to the leakage (the most common cause of mold buildup), excessive demolition, searching for mold, and using emergency contractors for everything, and foregoing competitive bids for repairs. Be more deliberate, avoid panic, and save money.

[For more information on mold, visit www.epa.gov, www.cdc.gov/mold or www.cdph.ca.gov.

Kelly G. Richardson, Esq. is a Fellow of the College of Community Association Lawyers and Senior Partner of Richardson Ober PC, a law firm known for community association advice. Kelly@RichardsonOber.com. All rights reserved®. Reprinted by permission. ❖



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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 many ways for board members to be educated, and Beven & Brock offers two free ways.

Upcoming events:

April 23, 2019: 6:30 to 8:30 PM.
Money Money Money!!

See first page of this newsletter for more information.

May 21, 2019:
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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