



# BEVEN & BROCK

## NEWS & VIEWS

### for Homeowner Associations

April 2023

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### It's "VOLUNTEER APPRECIATION WEEK"!

By David Brock, PCAM



It's that time of the year... when we are reminded to celebrate the "volunteers" in our life.

Volunteer Appreciation Week is observed every year in April. As the name suggests, it is **a week to honor, recognize and celebrate the selfless individuals who volunteer their time and energy to help others and promote good causes.**

In 2023, this week occurs from April 16-22. It would not be a bad idea to celebrate volunteer Board members more frequently. Volunteer board members cannot be thanked and appreciated enough.

I have said it before that in my opinion HOA Board volunteers are some of the best volunteers who serve. HOA board members serve in what many consider to be a thankless capacity to help steer the ship of their communities, and

*"It's "VOLUNTEER APPRECIATION WEEK"!": continued on page 5.*

### Every Owner Should Have A "Unit Owner Policy"

By John Sinner, State Farm Insurance

The recent rainy season may convince some owners who don't have a "Unit Owner Policy", also known as a "HO-6" policy to strongly consider obtaining one. Water intrusion into units from rain can occur from multiple sources, whether it is the roof, windows, siding, or ground level flooding. Condominium owners very often believe that the Association's master policy will 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 everything. It is true that the "HO-6" policy is a great value but is often not purchased.

Suppose you are having a party in your own condominium, and one of the guests falls on the stairs inside your unit. The liability resulting from an injury occurring within an individual unit is NOT covered under the Master policy of the association.

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 as "bare walls" policies, will not cover damage to your fixtures, such as cabinets, flooring and wall coverings. The "wall's in" coverage does provide this coverage. However, the Board may



follow the CCR's and have the unit owner submit the damages under the HO-6 policy.

In either case, all owners are strongly encouraged to purchase the HO-6 policy. This "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 much more critical when the association carries the "bare

*"Every Owner Should Have A "Unit Owner Policy " ": continued on page 5.*

# Neighbor-To-Neighbor Disputes: They Are Such A Nuisance

By David C. Swedelson, Esq., Senior Partner at SwedelsonGottlieb

Not a week goes by that we do not hear from a manager or member of a board of directors inquiring as to whether or not the association has to enforce the governing documents. This question often leads to debate between board

members, as to whether the association is absolutely obligated to enforce the restrictions and the CC&Rs.

For example, a homeowner complains that the neighbor below keeps banging on the ceiling every evening when she gets home. It seems that the lady downstairs believes that the neighbor upstairs is causing too much noise when she walks around her unit. What about the neighbor who complains that their next-door neighbor is playing drums, hoarding, or cooking food with strange odors? In each of these situations, the complaint is from one homeowner and involves only one other owner.

These situations are contrasted by the nuisance created by an owner who is constantly having loud parties in their unit, which is affecting many of the residents at the association, or an owner who is a hoarder that is causing an odor to emanate from their unit or is causing vermin or bugs to spill out into the common area and other units. These types of nuisance CC&R violations are not neighbor-to-neighbor type disputes. California community associations would certainly have more of an obligation to take legal action to enforce the governing documents when the nuisance impacts several, versus one, resident at the association.

Although an association may have the power to take legal action for violations of the rules and/or restrictions in the governing documents, the board does have some discretion deciding whether to exercise that power. If you look at most sets of governing documents, you will see that under the enforcement section that the association "or any owner" may enforce the restrictions. And section 1354 of the California Civil Code states the same.

In California, this issue was addressed in the case of *Beehan v. Lido Isle Community Association* in 1977. In *Beehan*, the Court held that the association should not

beheld liable for costs and attorneys' fees incurred by the individual members who brought legal action to enforce a setback restriction against another owner, even though the association had the authority under the governing documents to enforce the setback restriction.

The Court also rejected the plaintiff homeowner's argument that the association's likelihood of prevailing in the litigation should be determinative in the plaintiff homeowner's action to recover their fees and costs incurred. The *Beehan* Court noted:

The mere fact that a recovery for the corporation would probably result from litigation does not require that an action be commenced to enforce the claim. Even if it appeared to the directors...that at the end of protracted litigation, substantial sums could be recovered from some or all of the defendants, that fact alone would not have made it the duty of the directors to authorize the commencement of an action. It would have made it their duty to weigh the advantages of a probable recovery against the cost of in money, time and disruption of the business of the [association] which litigation would entail.

Obviously, the advantages of a probable recovery that would involve only one owner may be outweighed by the cost in terms of attorneys' fees, not to mention involvement by the volunteer board and management (who may actually charge additional money for additional services). But does this mean that the association should not get involved? Probably not, especially if the association wants to try to avoid being sued for not enforcing the governing



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"Neighbor-To-Neighbor Disputes:  
They Are Such...": continued on page 3.

"Neighbor-To-Neighbor Disputes:  
They Are Such...": continued from page 2.

documents.

The Court addressed this issue (citing the Lamden decision) in *Haley v. Casa Del Rey Homeowners Association* (2007) 153 Cal. App. 4th 863. In *Haley*, the Court upheld the board's decision to allow some owners' patios to encroach into the common area. Although *Haley* sought to force the board to strictly enforce the association's governing documents (requiring those owners who had already encroached to remove same), the Court held that the board had the discretion to select among means for remedying violations of the CC&Rs without necessarily resorting to litigation, and the court should defer to its decision.

What the cases tell us is that the board has the discretion to consider the nature of the violation, the impact on the community, and the cost in money, time and disruption of the association's business when considering legal action to enforce the governing documents. So while the board may not be obligated to file a lawsuit for every violation, *Haley* (and other cases) tells us the board should probably take some action. Typically, this requires that the board, at the minimum, investigate the situation. Have a board member or management check to see if they hear the sound, smell the odor, etc. The board should consider holding a hearing with all parties and witnesses to see if the issues can be sorted out and the disputes resolved. In addition, or as an alternative, the board should consider facilitating a mediation with all parties pursuant to Civil Code Section 1369.510, *et seq.*

Boards should not ignore complaints by owners, especially when there is a potential for violence. A duty to take action may also be imposed by Federal and State Fair Housing law. Sure, a member may say that they pay assessments and

\* In the pivotal case on this topic, the California Supreme Court, in *Lamden v. La Jolla Shores Clubdominium Association* (1999) 21 Cal. 4th 249, held that a court should defer to a board's authority and presumed expertise in discretionary decisions regarding the association's maintenance and repair issues. This has now been expanded to governing document enforcement as well.

therefore the association must take legal action. What they need to understand is that while they do pay assessments, those assessments are budgeted toward the actual costs of the association, and there is no budget item for legal fees and costs for their respective problems. Owners need to understand that it is not the association's obligation to enforce each and every violation of the restrictions or to get involved in each and every dispute that arises between owners.

While the board does have some discretion, it should not selectively enforce the Rules or CC&Rs and cannot act in a discriminatory manner. The board may have an obligation to get involved in trying to resolve a problem between two owners. The board should explain to the owners, perhaps as part of the Rules, the association's enforcement policy. The board should lay out how it will deal with these kinds of disputes and document these matters in its minutes (in the event the association is named in a lawsuit alleging a failure to enforce the governing documents) the reasons for its decision to take or to refrain from taking, legal action to enforce a restriction against a property owner, especially when complaints have been received from other owners. Evidence that an association failed to observe its own procedures in deciding to refrain from initiating enforcement actions could prejudice the association's position in a lawsuit by a disgruntled neighboring owner (see *Ironwood Owners Association IX v. Solomon*, 1986 California Case).

In conclusion, the best policy is for the association to investigate and make an informed and intelligent decision on these matters and consider a hearing or offering ADR or legal action if warranted.

David C. Swedelson, Esq., can be contacted for questions or concerns at [dcs@sghoalaw.com](mailto:dcs@sghoalaw.com) / 800-372-2207 ❖



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# Virtual Board Meetings: A Law That Came Too Late

By Kelly G. Richardson, Esq. CCAL

During the onset of the Covid-19 pandemic, HOAs were presented with a conundrum: Local health authorities prohibited gatherings of more than a few unrelated persons; however, HOA boards were required by the Open Meeting Act to have meetings that included the option of personal physical attendance, even if most members chose to participate telephonically or virtually.

For over a year, most HOAs and their managers and lawyers decided that it was more important to follow the emergency health orders and conducted purely virtual meetings, which technically violated the Open Meeting Act. Specifically, the meetings did not include a physical location where someone could attend and listen to the deliberations. This violated Civil Code Section 4090(b) and Section 4925(a), which require that there is a "physical location" with at least one director or person designated by the board in attendance. After evaluating whether to violate health directives or the Open Meeting Act, most lawyers decided that violating the Open Meeting Act was the lesser sin, and so the vast majority of HOAs met via purely virtual platform without a physical location announced.

On September 24, 2021, the Governor signed into law Senate Bill 391, which as an emergency statute became effective immediately. It created a new Civil Code Section 5450, allowing HOAs during declared emergencies to have purely virtual meetings with no announced physical location. The new statute also requires certain disclosures to the membership and changes in board meeting procedure during these purely virtual meetings.

Subsequently, many if not most HOAs still conduct purely virtual meetings, mistakenly thinking that the new law essentially ratifies the practice.

However, the law was enacted far too late to really be a help to HOAs during THIS emergency. SB 391 may be of great help during the next emergency, but not this one.

The key language in the new Civil Code Section 5450 is that

the governmental declaration of emergency must render the "gathering in person... unsafe or impossible." If so, and after the HOA makes certain disclosures to members, it can meet purely virtually. In early 2023, I do not know of any county presently banning or declaring unsafe small, in-person meetings of unrelated persons. [Check [www.covid19.ca.gov](http://www.covid19.ca.gov) if you are concerned or curious] Unless a local, state, or county government declares an emergency and prohibits small meetings of unrelated persons or declares them unsafe, Civil Code Section 5450 is inapplicable and HOAs must still comply with Civil Code Sections 4090(b) and 4925(a).

Associations have in the past two years learned the great benefit of adding a virtual component to their board meetings. That component remains a valuable addition to HOA governance, as members who are traveling, ill, or otherwise unable to attend can observe their HOA governance. However, it is time for HOAs to return to full technical compliance with the Davis-Stirling Act and begin to provide for a physical location with one director or other designated person to attend.

These "hybrid" meetings may well be the "new normal" for common interest communities, as we all welcome physical or virtual attendance. Associations would be well-served by some modest acquisitions of affordable sound and/or video equipment to enhance the experience of virtual attendees. Consider modifying the HOA's meeting procedures and embrace the new normal of both virtual AND personal attendees at board meetings.

Kelly G. Richardson, Esq. is a Fellow of the College of Community Association Lawyers and Partner of Richardson Ober LLP, a law firm known for community association advice. Submit questions to [Kelly@roattorneys.com](mailto:Kelly@roattorneys.com). Past columns at [www.HOAHomefront.com](http://www.HOAHomefront.com). All rights reserved®. ♦



*"Every Owner Should Have A "Unit Owner Policy" ": continued from page 1.*

wall's" 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.

Another important feature of the HO-6 is "loss of use" coverage in the event that you have to live elsewhere 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.

Please remember, it is also important to realize that ALL losses are not covered by insurance. If there is a loss that is due to inadequate maintenance there is no insurance available. It is important to be diligent as a board to repair, replace or maintain at the first indication of a problem so that future losses will be minimized.

In closing, the cost of the HO-6 policy is very reasonable, given the amount of coverage that it provides. The cost is in the range of \$25.00 to \$40.00 per month depending upon your individual needs or if you are renting out your unit. It just makes good sense to obtain this coverage.

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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*"It's "VOLUNTEER APPRECIATION WEEK"!": continued from page 1.*

sometimes in very difficult seasons. Board members, in fulfilling their role are required to wear two hats at the same time: the "member or owner" hat, and the "board member" hat. There are times when these two hats conflict with each other. It can be challenging to address the needs of the community and at the same time have your individual preferences not be met.

Many HOA board members have been serving their communities tirelessly for many years. For these fellow owners, this Association also is their HOME and INVESTMENT. Board members are required to make decisions that are for the benefit of ALL OWNERS.

The readers of this newsletter are board members for the most

part. Unfortunately, the members of your community may never see this article. As a board member, feel free to post this newsletter in a conspicuous place on the property, perhaps the mailboxes. You can

that the community members will agree on everything. During disagreement, it is still possible to recognize and appreciate those who willingly serve when not many others do agree to serve.



Here are some ideas: begin with a simple thank you note or email. Gift them a token of appreciation... a Starbucks card, or a small Amazon card. Attend a meeting and speak your thanks during Open Forum. Simple expressions of meaningful

recognition and gratitude will encourage them to continue serving longer.

This newsletter is available at [www.bevenandbrock.com/April2023.pdf](http://www.bevenandbrock.com/April2023.pdf) for distribution to your owners if you choose. ❖

also forward the digital version on to your community. There are other articles in this newsletter that Members may appreciate as well.

To the owners who see this article, we encourage to find a way or ways to APPRECIATE your board members. The nature of community living does not mean



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# Where Is The "Community" In Community Associations?

By M.J. Stevens

The culture has changed over the past 40 years... neighbors don't interact unless it's necessary. And it's too often caused by something negative. For example: noise, plumbing issues, or some violation of a rule. Interactions like this generally begin poorly and end up worse. Sometimes *the inciting problem* is resolved, but the damage to the relationship is never quite the same.

Imagine if before the "negative" event or problem occurred, neighbors had the opportunity to know one another in a more friendly setting -- would the issue be resolved and end better? Chances are good that this possibility would be true. Why? You're *my neighbor* now- not an adversary.

It would seem to make sense if neighbors had opportunities to engage in casual and informal ways that the possibility of better communication and even empathy might prevail in the community.

**Who is my 'neighbor'?** They are the residents on either side of your home - those above and below your residence, or across the driveway.

There are very few associations that intentionally try to gather residents to promote and foster the building of neighborly relationships. No doubt, doing this would bring a sense of community and civility to the association if they gathered for the purpose of 'neighborliness'. Likely, it would decrease legal costs, which in the long run benefits every member of the association.

Here are a few ways to engage neighbors in healthy ways that cost little to no money - just a willingness to bravely participate as a neighbor:

1. **Potlucks** - everyone contributes to the shared meal. The Board can take care of paper plates, napkins, cups and silverware, plastic tablecloths. Residents provide food items for 8-10 people. Ideas may include a casserole night, Mediterranean or Italian night, salads and

vegetarian night. Pick a theme and have fun. Let people head back home after a certain time, but a friendly game of Badminton or an Uno Card Game Challenge can follow dinner.

2. **Holiday Events** - Winter, Spring, Summer and Fall - it could be about decorating for the winter holiday, a glass of wine/sparkling water once a month, a favorite ice cream flavor night, collecting canned goods and staples for a local food bank, plant some bulbs and see what the Spring brings you in return, carve pumpkins together, throw up a white sheet and watch a movie on the green space one warm evening.

3. **A Friendly Newsletter** - with just that - friendly & newsy stuff! Sure, place a reminder in it for the upcoming board meeting, but make the newsletter about just the fun & interesting things: An advertisement for the children's school productions, a movie review, a good recipe, an idea for recycling, a handy tool or gadget everyone needs to have, a how-to for lawn or container gardening, a restaurant review, a safety tip, a two to three paragraph article of Did You Know? spotlighting a resident or family in the community.

### Here's 11 Easy Ways to Be a Good Neighbor

FROM: <https://alcoverooms.com/>

Neighbors are the people who are always there. Though you may not interact with them, they exist. Stay on good terms with your neighbor, as they are the people you see daily. Being cordial with your neighbor makes living, no matter where you are, much easier.

1. **Be Responsible with Your Pet**  
Pets are great to have in

*"Where Is The "Community" In Community...": continued on page 7.*

*"Where Is The "Community"  
In Community...": continued from page 6.*

an apartment or home but remember to be respectful of them. Clean after them and keep them from barking loudly. Always pick up anything your pet may leave behind on the grass.

**2. Say "Hello!"**

When you see your neighbor out and about, be sure to give them a wave and a smile.

**3. Be Quiet**

Remember to be quiet during nighttime hours. During the night, try to keep your voice low and if you plan to be loud, at least give your neighbor a heads up.

**4. Invite them Over**

Your neighbor can be your friend. If you're hosting a party or simply want to chat, invite them over to join you.

**5. Park Mindfully**

Parking can be challenging no matter if it's on the street or in a parking lot. Consider them

when you're parking. Make sure you park in the lines and don't take up too much space.

**6. Bring them Goodies**

If you make cookies or treats, bring some over to your neighbors. You don't have to, but it's nice to always go the extra mile.

**7. Respect Community Spaces**

If there's a rooftop, lounge area, pool, laundry room, etc., be sure to be mindful of the area and respect it. Don't spend all your time in those areas. If other people, like your neighbor, want to use it, let them.

**8. Help them in Rough Weather**

If you're cleaning up after a storm, go ahead and help your neighbor if you can. If they have leaves in their yard, help and rake them. However, if you help your neighbors out, they'll likely return the favor in the future.

**9. Give them a Heads Up on Neighborhood News**

If there's new news in the neighborhood, let your neighbor know. They'll appreciate hearing updates from you.

**10. Don't Overfill Trash**

Take out your trash on time so you don't have to overfill your trash cans. No one appreciates the smell, nor the sight of an overflowing trash can. Try to keep up with your trash out of respect for the people who live near you. Break down those Amazon boxes, as it allows for more room in the dumpster.

**11. Kindness is a great *second language we're all still learning after the Pandemic.***

Kindness is an amazing thing. We've been through a lot since 2020, and we all "took a hit" from the pandemic. We don't expect kindness but when it shows up - it multiplies itself. ❖

## WE WANT TO HEAR FROM YOU!

**We are working on articles on these topics for future newsletters, and we would like to hear from you on the following issues:**

1. SB326- Tell us about your experience if you have completed your inspections and required repairs. How did the process go for you? Was the cost manageable? Did your experience of complying with SB326 meet with your expectations? What advice would you have for other associations who have yet to go through this process?
2. EV Charging Stations - There is not a great amount of information on this topic, and we would like to know about your experience. If you have installed electric vehicle charging stations, tell us about this process for you. What advice would you have for other homeowner associations? What would you have done differently?
3. What topics would you like to see addressed in this newsletter? We want to continue to be relevant to the needs of HOA board members.

Please send your responses to [HOANewsletter@bevenandbrock.com](mailto:HOANewsletter@bevenandbrock.com).

### About this newsletter:

HOA News and Views has been published and provided free of charge to board members in Los Angeles county for over 30 years.

The newsletter is distributed quarterly during the first week of each quarter. If you do not receive it, and you have received it in the past, please let us know at [HOANewsletter@bevenandbrock.com](mailto:HOANewsletter@bevenandbrock.com). We do not remove names unless requested.

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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 types of training for board members.

#### BOARD TRAINING:

This CAI approved class will be taught by attorney Matthew A. Gardner, a Partner at Richardson Ober and is co-sponsored with the Community Associations Institute. Reservations may be made by emailing: [BoardTraining@bevenandbrock.com](mailto:BoardTraining@bevenandbrock.com). Or call us at (626) 795-3282, ext. 889.

#### UPCOMING DATES:

**May 2, 2023, (Zoom) 6:30 - 9:30 pm**

#### A RESOURCE AVAILABLE FOR HOA BOARDS!

Beven & Brock is pleased to announce the availability of a resource for Homeowner Association boards to find information on topics of interest as needed on demand. Over 135 articles have been taken from prior newsletters and gathered in one place, located at <http://www.bevenandbrock.com/topical-article-library/>. The topics are organized into categories, such as Legal, Meetings, board, Reserves, Insurance, Community, Elections, Maintenance, Management and other subjects.

This area of the website requires a simple one-time registration, and once that is completed, you can freely access a number of articles on a variety of topics that have appeared in HOA News and Views over the past eight years. This resource will help HOA board members to become educated in an easy and accessible way. The goal is to help boards make well-informed decisions in a variety of challenges that they may encounter.



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