



# BEVEN & BROCK

## NEWS & VIEWS

for Homeowner Associations

January 2019

### Fidelity Insurance Requirements for CIDs

By Timothy Cline, CIRMS, Cline Agency Insurance Brokers

Two separate embezzlement claims in Southern California over the last four years have resulted in losses estimated to exceed 3 Million dollars and impacted nearly two dozen homeowners associations. Prior to this bill, the Davis-Stirling Act, California's complex common interest development act, had been surprisingly lean on guidance for non-profit CIDs with regard to crime and embezzlement protection. While a long-standing provision, Civil Code §5300(b)(9) required associations to annually distribute a summary of the association's fidelity insurance policies including the name of the insurer, the deductible and the amount of coverage in force, but until last month there was no direction regarding (1) the scope of coverage; (2) the acceptable limits that should be maintained; and (3) whether or not the crime/fidelity coverage was to be extended to the manager and/or management company. All that changed on September 14, 2018, when Assembly member Irwin's (D-Thousand Oaks) legislation passed Governor Jerry Brown's desk and was signed into law.



Effective January 1, 2019, California common interest developments must now carefully consider the limits and scope of coverage when renewing their crime/fidelity coverage:

(1) **Minimum Limits:** The Crime/Fidelity coverage must be in an amount equal to or greater than the combined amount of three months of assessments plus reserves\* (unless the CC&Rs require a higher amount—in this case, the coverage limit must conform to the CC&R requirements).

\*Since crime/fidelity policies are written on a one-year form, Boards must consider not only the *current* Reserve balance, but also what contributions may be made to the Reserve Account over the coming 12 months. Barring any anticipated (or sometimes unanticipated) capital expenditures, Reserve account balances will increase monthly. Of course, CIDs who anticipate levying a special assessment during the upcoming year, or expect a large insurance settlement, should calendar such events and amend the limits as necessary to remain in compliance with the Act.

(2) **Mandatory Insuring Agreements:** Coverage must include Computer Fraud and Funds Transfer Fraud insuring agreements (in addition to the standard Employee Dishonesty insuring agreement).

(3) **Who's Covered?** On a typical fidelity/crime policy, the principal is protected from dishonest acts committed by their "employee(s)." In a condominium setting, the definition of "employee" must be broadened to recognize the board members as non-compensated "employees" of the Association. Now, that definition of "employee" must be broadened further to include dishonest acts committed by the managing agent.

Simple crime/fidelity provisions or endorsements added to Master Policy package policies will not work in most cases as they rarely include the Computer Fraud and Funds Transfer Fraud insuring agreements and virtually never address the management agent and/or management company. As a result, boards of directors will

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### HOA SEMINAR AND VENDOR EXPO

April 23, 2019

#### "MONEY MONEY MONEY" Addressing myths and red flags!

This seminar will feature Tim Bradley, CPA; Kelly Richardson, Esq, of Richardson Ober, PC, and David Brock, PCAM. The presentation will focus on the topic of best financial practices and safeguards for HOA's. Understanding how to protect your funds and avoiding the pitfalls that lead to the loss of funds will be discussed.

We will examine the new law (AB2912) and it's application in practical ways. We will also look at all financial issues that HOA's deal with such as tax filings, reviews and other requirements. And, as always, your questions will be answered.

Reserve your seat now. Email "HOASeminars@bevenandbrock.com; or call (626) 795-3282, ext. 886.

# Is Your Association Manager Certified?

## Certification of Managers.... is it important?

Common-Interest-Developments (CID) have a wide range of choices when it comes to making a decision for hiring a management company. Management companies range from national corporations to sole proprietors working from a home office.

The differences between management companies are significant and the comparison of companies can be daunting. However, the state of California has provided an excellent means of comparing managers that every board should utilize in seeking to hire or replace a manager and management company.

In 2003, the legislature passed legislation, which became codified in the Business and Professions Code in Section 11502. The section specified how someone can be called a “*certified common interest development manager*”. Strangely, while this code section defined what is required of someone who is called a *certified common interest development manager*, the law does not require those who function in this capacity to actually be certified.

**Sincetheinceptionofthelawand annually thereafter, a person who either provides or contemplates, providing the services of a common interest development manager to an association shall disclose to the board of directors of the association the following information:**

- (a) Whether or not the common interest development manager has met the requirements of Section 11502 so he or she may be called a *certified common interest development manager*.
- (b) The name, address, and telephone number of the professional association that certified the common interest development manager, the date the manager was certified, and the status of the certification,

and

- (c) The location of his or her primary office.

The law requires managers to pass an examination that would test knowledge, skills, and aptitude as outlined in Section 11502. The law further requires managers to complete 30 hours of course work initially and re-certify every three years, completing the 30 hours in a number of areas broadly related to common-interest-development management, including a course in ethics. In addition, *letters of reference* are required and at least six months of experience are required prior to becoming a certified manager.

While there is plenty of great criteria to utilize in making the best decision for your next management company, the issue of certification of management staff is an easy one. 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 board members reduce their labor as volunteers, (remember the hourly rate you are earning as a board member). It is so important that you make good decisions in hiring 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.
- Conflicts of issue can easily exist for both managers and board members, but having a manager who has agreed to abide by a *Code of Ethics* adds a layer of accountability to them.

Given the fact that for most people, their home represents one of their most valuable assets,

it would make best sense to have a manager who is certified. 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.

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. A *certified* association manager separates those who are committed to the industry from those who simply applied for a job and were hired to work at a management company.

The position of association manager requires technical knowledge as well as a variety of skills. The issue of burnout is significant in the CID management industry. 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.

*Is Your Association Manager Certified?:  
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## New Legal Requirement Regarding “Transfers”

AB 2912 has brought about several changes for how associations are to operate in their financial matters. Other articles in this newsletter address the need for fidelity insurance, as well as the requirement of boards to review financial statements monthly. However, one sentence in AB 2912 imposes a new requirement on how association boards are to handle the transfer of funds.

AB 2912 adds a new section, which is Section 5502, that states *“notwithstanding any other law, transfers of greater than ten thousand dollars (\$10,000) or 5 percent of an association’s total combined reserve and operating account deposits, whichever is lower, shall not be authorized from the association’s reserve or operating accounts without prior written board approval.”*

This one sentence in the law is rather vague and has caused a great deal of confusion in the

HOA industry. It seemed that the law requires any “transfer” of funds over \$10,000.00 or 5% of the HOA’s total assets would require a board meeting and a majority board approval prior to paying a bill. The broad meaning of “transfer” can include a simple payment. If true, this would cause a serious hardship on many small associations who meet infrequently, and would be unable to pay even small bills without a board meeting. There would be inevitable delay in payments to vendors.

We have since learned that the bills original intent is quite different. The Community Association’s Institute played a role in the drafting of this legislation, and the quote below is from an attorney who helped draft the legislation:

*“Our bill as initially proposed expressly referenced “electronic transfers.” The Senate amendments deleted the word “electronic.” However, the stated purpose in*

*the Senate Analysis was to make the restrictions less onerous, and more feasible, given the volume of electronic transfers by putting a floor on the requirement. On the one hand, deleting the word “electronic” arguably evinces an intent to impose the requirement on all “transfers.” However, the Assembly Analysis discusses the Senate amendments in the context of “electronic” transfers”.*

The “concurrence in Senate amendments” statement of August 7, 2018 states specifically, that this bill “prohibits a managing agent of a CID from making **electronic** transfers of funds”.

It is clear that avoiding fraud should be a high priority for HOA’s and that conducting business electronically, where there is no paper trail is a red flag to be avoided.

We will continue to provide updates on this issue in this newsletter as appropriate. ❖

## Painting - Four Important Questions!

We have asked two premier HOA painting companies for their answers to questions that associations ask during the painting process.

### 1. How should an association obtain quotes for painting and how can they be sure that the bids are comparable in terms of the job scope?

**CertaPro Painters:** The best way to obtain comparable quotes is to create a tight paint specification and scope of work. Typically, this is best created by partnering with a specific paint manufacturer such as Dunn Edwards or Sherwin-Williams. The scope of work should include a detailed list of items to be painted (eaves, siding, windows, doors, carport ceilings, deck surfaces, wrought iron railing, wrought iron fencing, etc.). The term “paint complete exterior,” as an example of a scope of work is too vague. If the wrought iron fencing, for instance, is not attached to the building, some contractors might include it as part of the “complete

exterior” and some might not. Once the detailed scope of work is created, then the party writing the paint specification can identify the preparation, priming, coats of paint and type of paint required for each item in the scope of work.

When the scope of work and paint specification is complete, conduct a *job walk* where contractors can view the property and ask pertinent questions required to prepare their bids.

**Ferris Painting:** The easiest and best way to do this is to contact the manufacturer of the paint you prefer. A paint rep will be assigned to you. Meet with them at the property and show them what you want to have painted. The rep will then check the condition of all the surfaces to be painted and come up with the recommended type of paint to be applied for each of the different surfaces that you have. The rep will then prepare a scope of work and a printed specification. A scope of work indicates what surfaces are to be painted. A

specification indicates the products to be used on those surfaces and how many coats will be applied.

Typically, a job walk will then be scheduled and conducted with 3-4 painting contractors and at this time, all the contractors will get a copy of the specification.

When all the contractors follow the specification, this will ensure that all the bids are the same.

### 2. What are the potential dangers of selecting the low bid?

**CertaPro Painters:** Selecting the lowest bid puts you at risk of inferior product use and a paint job that “cuts corners” to bring the cost down. Cutting corners includes inferior prep work that starts to fail shortly after the paint job is completed and “stretching the paint” by watering it down. Also, you may be selecting a company that claims it has workers comp insurance but is hiring at least part of the crew as day labor and paying them under the table in cash. Day labor is NOT covered by workers

*Painting - Four Important Questions!  
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# New Legal Requirement: Review Your Financials Monthly!

Effective January 1, 2019, Assembly Bill 2912 became law in California. This bill amends two existing Sections of the Davis-Stirling law and adds three new sections. This law increases the responsibility of board members and adds some specificity as to how financial statements should be reviewed and the frequency of the review. This article is addressing only one aspect of this new law, while other articles in this newsletter address the two other primary aspects of the law: fidelity insurance and fund transfers.

The Davis-Stirling Act in Civil Code Section 5500 has required boards of directors to review their association's financial records quarterly. The new law will require boards to review financials

**monthly.** In the past the quarterly requirement to review financials did not indicate whether the board was required to meet to review the financials, however, this was the common understanding. The change in the law addresses this ambiguity.

The law now adds Section 5501 which indicates that the review requirements may be met when "every individual member of the board, or a subcommittee of the board consisting of the treasurer and at least one other board member" reviews the documents and statements described in Section 5500. This review can be accomplished "**independent of a board meeting, so long as the review is ratified at the board meeting subsequent to the review and that ratification is reflected in the minutes of that meeting**".

**What exactly is to be reviewed? Section 5500 addresses this question.**

The code identifies the specific reports that must be reviewed monthly.

- A) The current reconciliation of the association's operating account(s);
- B) The current reconciliation of the association's reserve account(s);
- C) The current year's actual operating revenues and expenses compared to the current year's budget;
- D) The latest account statements prepared by the financial institution where the association has its operating and reserve accounts.
- E) The income and expense statement for the association's operating and reserve accounts; and
- F) The check register, monthly general ledger, and delinquent assessment receivable report.

Let's simplify the requirements. We have always believed that any volunteer board member should be able to meet the requirements of the law, and not require the skill of

a financial professional.

**The following is now required:**

- 1) Every association must produce financial statements monthly.
- 2) Those statements must include bank reconciliations, a budget comparison report, an income and expense statement, a check register, a general ledger, and a delinquent assessment report.
- 3) At least two board members, including the Treasurer, must review the statements monthly. A meeting is not necessary to do this.
- 4) When the board meets, the board needs to ratify the review, and indicate approval in the minutes.

**When the monthly statements are reviewed, what should the board be looking at?**

- 1) The reconciliation of all accounts: the bank statements should always accompany the reconciliation report. You are looking for agreement between the books of the association and the balance indicated by the bank. There are generally always adjustments, as there may be checks written and not yet cleared.
- 2) The budget comparison report is the best report to gain an understanding of the current year's actual operating revenue and expenses compared to budget. A good budget comparison report will allow you to view the variances in both a percentage and dollar format. Some variances will be insignificant when viewed for the entire year. The focus of attention should be on the major differences and these areas are generally related to maintenance categories, which are unpredictable and potentially significant. Areas

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# Manager Certification: The 2019 Annual Disclosure

The following managers 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 August 18, 1994, Emeritus; and is a licensed Real Estate Broker.
- Vianna Boettcher, CCAM; since January 10, 2006;
- Juanita Flores, CCAM; since June 28, 2004
- Laura Hoot, CCAM; since July 11, 2003
- Lori Lacher, CCAM; since July 11, 2003
- Sue Threadgill, CCAM; since March 20, 2003

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, October 1, 1990, and is a licensed Real Estate Broker.
- Marilyn Howald, CMCA, since September 4, 1996.
- Laura Aguilar, CMCA, since October 6, 2016 and AMS as of November 2016.
- Paul Cannings, CMCA, since July 11, 2003.
- Patricia Ford, CMCA, since September 22, 2004
- Fang Zhu, CMCA, since June 16, 2017;

### Not Currently Certified as of 1/1/2019:

- Roman Esparza, CMCA from 2/13/2009 - 10/13/2018; currently in process with CAI where he is a member to gain certification, and is a licensed Real Estate agent.
- Alex Montoya - Certification expected in January 2019.


The location of the manager's primary office is 99 S. Lake Avenue, Suite 100, Pasadena, CA. 91101. ❖

### Is Your Association Manager Certified?: continued from page 2.

- Conflicts of interest: 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 manager benefits in other ways.
- 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 this 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 hire a manager you must make the strongest decision you can make, and that should be for a *Certified Common Interest Development manager*. ❖



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<sup>1</sup> Annual percent yield (APY) is accurate as of April 15, 2018. Minimum balance required to open and earn the APY is \$5,000.00. This Special 14-Month CD will not be available after June 30, 2018. Funds withdrawn prior to maturity may be subject to an early withdrawal penalty. Fees may reduce earnings on the account. Upon maturity CDs will roll into 12-Month CD at the rate then currently available.

<sup>2</sup> 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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# Fidelity Insurance Expert Advice

## Steve Segal; Farmers Insurance

“With most carriers the price for Fidelity Bond protection is an inexpensive cost when compared to the other coverages (i.e., building, liability, D & O) that make up the HOA’s insurance protection.”

## Elliot Katzovitz; Elliot Katzovitz Insurance

“An association needs an agent that specializes in condo associations and is well versed in all

of the details within their contracts.”

## John Sinner; State Farm

“State Farm policies will add the coverage with a simple application. However, if the association requires a bond in excess of \$500,000.00 then the application becomes more complicated and requires all board members to complete an application. It may be advisable to seek an independent agent for a “stand-alone” policy.” ❖

## Governor Signs First-Ever Mandatory...: continued from page 1.

have to speak with their insurance agent/broker to confirm that their current policy complies, or to have a standalone crime/fidelity policy issued that would comply with all three of the new insurance requirements.

January 1, 2019 is around the corner. California CIDs should contact their insurance agent/broker immediately to have the

coverage amended, if necessary, to comply with the new law. Prior to contacting your insurance professional, it would be prudent to review your Association’s governing documents to see if crime/fidelity coverage is required and if so, if the prescribed minimum limits exceed the limits required by the new legislation.

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## New Legal Requirement: Review Your Financials Monthly!: continued from page 4.

of over expenditure can serve to allow the board the ability to understand whether a special assessment or a need to borrow from reserves will be necessary at some point in the year.

- 3) The “income statement” or “cash flow” report should communicate the revenue and expenses for the operating and reserve accounts. The “cash flow” report is best as it shows the beginning and ending balances for the period.
- 4) The “check register”, sometimes called the “check detail” is a report that lists the expenses for the period, with the check number and other information.
- 5) The “general ledger” report shows a breakdown of every separate income and expense item and a running balance in your account

after each item.

- 6) The “delinquent assessment receivable report” also called an “aged receivable report” shows the status of any owner who still owes money, or has a credit on their account.

The board members, or at least the Treasurer and one other board member, should probably spend about 15-20 minutes on this monthly task, once they are familiar with the process. This task should not take hours to accomplish.

## To simplify your efforts follow these easy guidelines monthly:

- 1) Look for areas of significant over-expenditure in the budget comparison report.
- 2) Look for collection issues, where an owner is delinquent by more than 30 days.
- 3) Make sure that your accounts are all reconciled.
- 4) Scan the check register and general ledger. ❖



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comp insurance and can become a headache if an injury occurs. Additionally, change orders may become a big issue. Depending on how vaguely the contract is written, things like additional coats required for proper coverage or minor unforeseen repairs may be presented to the board as change orders.

Finally, if a low bid is priced so far below the other bids that the Board considers the price "too good to be true," it probably is too good to be true. The estimator probably missed something when estimating. And while one may think, "well, that's the contractor's problem, I just want a great price," it will soon become the community's problem as the contractor doesn't provide adequate customer service because he just wants to get the job done as quickly as possible. These might be things you can't see immediately and attempts to come up with change order "surprises" to make up for the low bid. In short, the job becomes a major headache for the HOA.

**Ferris Painting:** Painting is not a simple commodity. There are great differences between contractors. Usually, the better-quality contractors are a little more expensive. That's because they are worth it. They typically have many years of experience under their belt and when an issue comes up, they can fix it. They also know what best to do in certain situations. When you accept the lowest bid, you rule out the best companies. You guarantee yourself not to get the best job and you may just end up getting the worst.

### 3. What sets great painting companies apart?

**CertaPro Painters:** Great painting companies build their reputations by fulfilling their promises and keeping open lines of communication before, during and after the projects. Additionally, they attract painting talent by providing a workplace of choice. This, in turn, delivers the best craftsmen for the customer's projects.

**Ferris Painting:** Traits of great painting companies are:

1. Clearly worded contracts stating what will be painted, how many coats and with which products.
2. Written guarantees.
3. References from nearby property's that were recently painted.
4. Communication to the residents indicating the start date of the project, the working hours and if the resident needs to do anything in preparation for the painting.
5. Follow through. Sometimes issues occur and great painting companies can solve those issues, whether that means a touch up is needed, an issue the resident needs help with, or just more information is needed. The contractor can provide their phone number to the residents in case they have any of these concerns.
6. Licensed and properly insured. This includes worker's comp to protect you if a worker is injured, general liability to protect you if damage occurs, auto insurance, and a rider that ensures the contractor has proper insurance to work on your type of property. Some liability insurances do not allow work on HOA's so you must make sure your contractor has the proper insurance and can work on your property.

### 4. How can an association know that they are getting a great job?

**CertaPro Painters:** Before the contractor selection is made, interview the company and ask pointed questions about their approach to the job. Also, check references. Ask the references not just about the experience leading up to and during the job, but how has the experience been after the job for any required warranty work.

During the job, ask for daily updates and for the contractors project manager to show you the work in progress. You should be seeing the preparation, priming and painting steps outlined in the contract being conducted in a

transparent and visible manner. Finally, do a final job walk with the contractor (we call it a pride walk) at the end of the project to make sure the cut lines are straight, that there are no holidays (areas without enough paint applied) and that clean-up is to your satisfaction.

**Ferris Painting:** If you have someone at the property that can walk the job periodically, they can look for the following:

1. Make sure the surfaces are cleaned before painting.
2. Make sure all peeling or blistering paint is removed or sanded properly.
3. Make sure everything is masked off and that the ground and any plants are protected as best as possible.
4. Talk with your contractor every few days and listen to what he says and how he says it. If he is straight and to the point, that's a sign that the job is going great.
5. How do the completed areas look? Great or not so great?
6. And finally, ask a few of the residents how the job is going from their perspective. Are the workers courteous, friendly and eager? If so, that's a sign the job is going great. ❖

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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:

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

See first page of this newsletter for more information.

**February 12, 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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