



# BEVEN & BROCK

## NEWS & VIEWS

for Homeowner Associations

January 2020

### 2020 Legislative Update

In the last months of 2019, Governor Newsom signed a number of bills which impact common-interest-developments in California. In addition, the California Department of Fair Employment and Housing, which enforces civil rights laws in California adopted new Fair Housing Regulations that will have an impact. This article will address first the new laws signed by the Governor.

1) Senate Bill 652 adds a new section to the Davis-Stirling Civil Code in Section 4706 which prohibits HOA's from banning religious items on entry door or door frames, if they do not exceed 12 by 36 inches, and do not interfere with the door closing and are not obscene or threatening to public safety. In the event the association is performing repair, maintenance or replacement of the door, then the owner can be required to temporarily remove the item.

2) Assembly Bill 222 adds new language to the Fair Housing laws, adding veteran or military

*"2020 Legislative Update":  
continued on page 3.*

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WHAT HAPPENS WHEN A NEW GOVERNOR AND 120 LEGISLATORS GET BUSY ON YOUR BEHALF?

### TOPICS INCLUDE:

- \* HOA Elections are now changing again
- \* Is Fair Housing becoming more "fair"? You decide.
- \* Balconies: new mandatory inspections of balconies, walkways and stairways
- \* Religious symbols on doorways
- \* Protection for "Granny Flats" in HOAs?
- \* Day Care homes in your community - Are they allowed now?

### FEATURED SPEAKERS



#### Brian D. Moreno, Esq. CCAL

Brian is a community association attorney with Swedelson Gottlieb in Los Angeles, and is an experienced litigator and community association attorney, having practiced common interest development law since 2003. Brian has represented and provided legal counsel to the boards and managing agents for California condominium and planned developments, as well as stock cooperatives, qualified vacation ownership resorts, and mobile home communities in connection with matters pertaining to common interest development, real estate, collection and corporate law.



#### Kelly G. Richardson, Esq. CCAL

Kelly G. Richardson is a co-founder and partner of Richardson|Ober|DeNichilo. In practice since 1983, Kelly is in his 30th year of serving California common interest developments. He is a national leader, syndicated columnist, and frequent expert witness regarding homeowners association law.

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# HOA Election Processes Much More Difficult In 2020 - SB323

By Kelly G. Richardson, Esq. CCAL



An extensive overhaul of HOA election procedures takes effect in 2020 after passage of the controversial SB 323. Here is a recap of the many changes:

- Civil Code 5100(g) will finally allow votes by acclamation when, at the close of nominations, there are not more candidates than open seats. Unfortunately, it only applies to HOAs of over 6,000 members.
- Associations will be required by a new Civil Code 5100(a)(2) to hold board elections at least every four years. This will affect few HOAs, since most have board terms which are one or two years in length.
- In the past, many HOAs have held hearings to suspend the voting rights of members delinquent in their assessments, and others have bylaws barring such homeowners from voting. The new Civil 5105(g) (1), however, requires HOAs to give ballots to all association members. So, delinquent members may vote on HOA matters, even though they are not paying their share of the HOA expenses.
- Although some HOAs allowed managers to serve as the Inspector of Election, under the new Civil Code 5110(b) this is prohibited.
- Some HOA Bylaws do not require directors to be an association member, but the new

Civil 5105(b) disqualifies non-members from serving.

- The new Civil 5105(c) allows associations in bylaws or election rules to disqualify candidates if the member: Is delinquent in assessments (without a payment plan in place); Has not been a member for at least a year; Is co-owner with another director; or Has a felony conviction which would harm the HOA's ability to obtain fidelity (dishonesty) insurance. The law does not specifically state that these are the only disqualifications allowed.

- One of the strangest parts of the new law is the new 5105(e), requiring that a candidate must be offered Internal Dispute Resolution (Civil 5900) before they can be disqualified. It is unclear how an association could negotiate someone's ineligibility if they are a felon, or not a member, or a co-owner with a current director, but that is the new requirement.

- The greatest single problem for all HOAs is that the law lengthens the election cycle by at least 60 more days. Civil 5110 has long required ballots to be sent at least 30 days before counting of ballots. The new section 5115(b) requires the HOA announce the upcoming election and nominees at least 30 days before the ballots are distributed, and section 5115(a) requires that a call for nominations

must have a deadline of at least 30 days. This means that, if everything is done on the shortest time frame, elections will take 90 days.

- Civil 5125 will require that the Inspector keep not only ballots but also signed voter envelopes, voter list, proxies and the "candidate registration list". (However, the term "candidate registration list" is undefined.)

- Membership rosters normally include only names and mailing address Under Civil Code 5200(a)(9), those rosters now will include email addresses. Many members may choose under Civil Code 5220 to opt out of these lists.

- Lastly, the bill adds a new Civil 5910.1, barring HOAs from suing members if they asked for Internal Dispute Resolution and the HOA did not participate in good faith.

SB323 brings a bewildering (and occasionally nonsensical) set of changes, and associations should consult their attorneys - soon.

Kelly G. Richardson Esq., CCAL, is a Fellow of the College of Community Association Lawyers and a Partner of Richardson|Ober|DeNichilo LLP, a California law firm known for community association advice. Send questions to Kelly@rodllp.com. Past columns at www.HOAHomefront.com. All rights reserved®. ❖

## Winning Strategies For HOA Boards

By David Brock, PCAM



Whether you have served on an HOA Board for many years or only a short time, you may have the sense that it is a very challenging, difficult and thankless job. Even owners, who have never served on a HOA Board, usually view it this way which explains why people are *not* clamoring to be on the Board of their HOA.

Have you wondered how the job could be made more manageable,

or do you take the position that this is just the way it is, and it can't change? Hopefully, this article can help change some of your thinking.

The way Board members serve has a lot to do with how they *perceive* the job based on the model provided by prior board members, or how they think the job should be performed based on their professional career where they have worked as a manager or supervisor. While it may make sense that either of these "training" methods have merit, the reality is that HOA board service should function differently.

"Winning Strategies for HOA Boards":  
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## New Resource Available For HOA Boards!

Beven & Brock is pleased to announce the availability of a new 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. ❖

*"2020 Legislative Update": continued from page 1.*

status as a new protected class. Housing discrimination based on military or veteran status will be as illegal as race and other illegal discriminations.

3) Another significant new law is Assembly Bill (AB) 5, which changes the legal definition of employee. This new law, codified in the Labor Code Section 2750.3, affects HOA's who use "independent contractors" that may be classified as "employees" under the law. This law defines a worker as an independent contractor who is not controlled or directed by the HOA, and if the work is outside the HOA's normal business, and the worker also performs work for others. If an HOA fails these tests, the worker may be considered an employee, which may create the requirement of sick leave and other obligations normally associated with an employer.

4) Assembly Bill 670 adds Section 4751 to the Civil Code which prohibits planned development associations from "unreasonably" restricting the construction of accessory dwelling units (ADU). It is premature to know how this law will impact planned developments. The law does provide for reasonable restrictions by the association, and all applicable building and zoning codes must be satisfied.

5) Senate Bill 326, known as the "balcony bill", will now require periodic inspections of "vertical elements" in HOA's. Vertical elements refer to balconies, walkways and other above-ground elements attached to buildings and must be conducted by a licensed structural engineer or architect. The

inspection must be a "reasonably diligent visual inspection". This bill originated from the balcony collapse in Berkeley in 2015, which caused six deaths and injured seven. Prior to the first inspection, the inspector is required to generate a random list of locations to inspect which must be a representative sampling of the vertical elements. The inspection must include the waterproofing, the current condition, the expected future performance and remaining useful life, as well as recommendations for any necessary repairs or replacement. The first inspection must occur by 2025 and must occur every 9 years thereafter.

6) The Department of Fair Employment and Housing has added new regulations that take effect January 1, 2020. The definition of "owner" now includes governing bodies of common interest developments, which mandates that HOA boards now are involved in matters within their community. The issues where an HOA board may need to get involved include matters of alleged or actual harassment, hostile environments, and sexual harassment. The area of harassment may include "quid pro quo" harassment, in which favors are expected or demanded in exchange for return favors. These situations may involve Board members, homeowners, renters, or vendors. Harassment issues may involve either verbal, physical or visual, such as posters, cartoons or similar. A board's responsibility in alleged matters of harassment or hostile environments requires the board to respond by investigating the issues involved and interviewing

those involved as well as witnesses to determine what occurred. Documentation is important in these cases, and if a board is not able to objectively review this, they may need to work with their legal counsel.

A final area of importance that association's face is in the area of "accommodation requests". It is illegal for a board to fail to provide a reasonable accommodation when necessary to give a disabled person the equal opportunity to use a dwelling or common area. Any request for an accommodation must be taken seriously and investigated by the board. The requesting party must provide information about the disability and why the accommodation is necessary. The request, if denied, can create other challenges if improperly denied, so it is important to be thorough, fair and reasonable.

For further information, on the new laws and regulations, you can go these websites:

<https://www.dfeh.ca.gov/Housing/> and <http://leginfo.ca.gov/>.

You are also encouraged to support the lobbying effort that works towards your interests in fighting bad legislation. The California Legislative Action Committee's website is: <https://caclac.com/>.

Finally, the annual two-day lobbying event for board members and other professionals will be held this year on March 30-31 in Sacramento. You may contact us for further information if you have interest in attending. Please write us at [HOANewsletter@bevenandbrock.com](mailto:HOANewsletter@bevenandbrock.com). ❖

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## A Look At "HOA Elections": The Perspective From An HOA Election Inspector

By Tommy Ouzoonian, President of Majority Rules, LLC

SB 323 was signed into law by the Governor and will become effective January 1, 2020. This bill was the first major change to the Davis-Stirling Act after many tries by the State legislators over the past several years.

After conducting thousands of elections over the past twelve years, we have seen some common issues that face HOA's. One of the biggest is the ability to make quorum and actually have an election on the date scheduled. (Quorum is the minimum number of ballots that must be returned in order to have the election.)

About 84% of our clients do make quorum the first time, but for the 16% who don't, many need a reconvened meeting to finally consummate the election. This results in extra costs for the HOA in the way of paying an Inspector to return time and time again as well as the costs of re-mailing ballots to those who haven't voted.

SB323 makes some changes that could make achieving quorum even more difficult. One of those changes is that it allows owners to review the signatures of all other owners on the outside mailing envelopes, and to copy voter lists. As a condition of casting a ballot, homeowners must give up their right to keep their signatures private. In this day and age of the fear of identity theft, some folks may decide not to vote rather than let people they do not know have access to their name, address, and signature.

In fact, we receive a few ballots

every week from owners who have placed their signed ballot in another envelope (without their signature on the outside) because they don't even trust the Post Office to see their signature.

Next to identity theft, many people really hate unsolicited marketing e-mails and mailed materials. Under the new law, a member's e-mail address is now part of the membership list that is available to *all* members, upon request. Members can opt out of having their e-mail addresses included with the membership list, but the bill makes NO allowance for e-mail addresses that have already been provided to associations. For marketers, access to all of their neighbors' e-mail addresses and mailing addresses at NO COST is a pretty good find, especially in large HOA's.

In the past 2 years we have conducted more recall elections than we conducted in the previous 10 years. There has been a growing dissatisfaction with Board members and the new law opens things up to even more dissension because under the new law, an owner can violate the HOA rules, refuse to comply, refuse to pay fines, and still vote.

There are several other changes which make conducting elections more onerous than it has ever been, and of course, more expensive as well.

By Tommy Ouzoonian,  
President of Majority Rules, LLC;  
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## The Joys Of Serving On An HOA Board

By M.J. Stevens

She started out with a smile and these words, "I'm going to give you skills to gain more joy." The implied *you* was for all HOA Board members present for the seminar held on October 22nd. There were a few sighs, guffaws, and under-the-breath comments with this thought of *joy* being associated with being on a Board.

Dr. Lori Baker-Schena's focus above and over all that she shared that night was—*find more JOY in*

*servicing on your board.*

Here's some of the ways Lori encouraged the JOY moving forward on your HOA Board:

**Realize Board Members are volunteers.** Know *why* you volunteer on your Board. It's key.

Develop a *Mission* as a Board. "*Your Mission*" is what guides everything you do as a Board.

The issue of "mission" addresses

*"The Joys Of Serving On An HOA Board": continued on page 5.*



*"Winning Strategies for HOA Boards": continued from page 2.*

Serving on a Board of an HOA is not about *management* of the association, but more about *leadership*. There is a difference.

Leadership is about setting policy and over-seeing the overall property. Oversight does not envision daily management of the vendors, but it means providing broad direction. Hiring the right vendors and establishing clear communication is key to this working.

Management, on the other hand, is about the day-to-day operation of the association. Volunteer Board members should not be concerned about the "management", but rather the "leadership" of the association. This concept applies to where there is a management company involved with the association.

This change in thinking may be met by a sense of disbelief by some board members who see their job as "on-site manager". To those board members, it would be good to consider the amount of pay you are receiving, and whether you really want "job-security" as it will be very difficult to find your replacement.

Many Board members, who see their role as managers usually burnout or become bitter, as the job of "on-site" manager is much more than they anticipated. The board members who lead, rather than manage, excel at delegation, setting boundaries and communicate in a way that that clearly conveys expectations.

This all begins in conversation with your board members where you create an understanding of how to apply these concepts to your community:

a) Always attempt to hire the best vendors available as that will lighten your responsibility and make your job easier.

b) View your vendors as members of your team who exist to help you accomplish the task. Request their advice on the best way to accomplish the task.

c) As a board member remember you are serving your community on your own time. Delegate as much as possible to competent and trustworthy people. That may include a *homeowner* willing to oversee an aspect of the community, or delegate to your management representative.

d) Boundaries: Allowing owners to interrupt you in your home, or in the common areas, should not be allowed unless it is an emergency. This includes conversations by email between meetings.

e) Communicating and understanding expectations is very important. For example, asking a vendor, or management, if it is possible to have three bids in a week. The perception of what a task involves may be different than reality. A manager may not know what a Board member doesn't know or expects, and a Board member may not understand what is involved or standard industry practices.

f) Learn about the subject of "policy governance" which volunteer Boards of directors should understand and adopt. A future article in this newsletter will address this.

g) Take the posture as a board member that there is *always something new to learn*. There are many resources today to help Board members accomplish their service.

In closing, THANK YOU for your service to your community. Some of your owners may not appreciate you, but we recognize and acknowledge the efforts you do for your community. ❖

*"The Joys Of Serving On An HOA Board": continued from page 4.*


"Why are we all here serving our community?" Discuss it and decide on this *mission* together as a Board - a team. Everything you do should serve that Mission. Example: "We as an HOA Board are here to bring a quality of life in the place we all live." If what you deal with isn't about this goal/mission, it's not a concern for you to handle and deal with as a Board.

**Realize you are a TEAM**—this means acting as one group, not as a group of individuals.

Successful HOA Boards do 5 Key Things:

1. Keep the community's Mission in mind.
2. Hold productive meetings.
3. Speak with one voice.
4. Remember WHO they are.
5. Communicate with the

*"The Joys Of Serving On An HOA Board": continued on page 7.*



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# Hiring Vendors; Best Practices

By Michael T. Kennedy, Esq.



Associations have occasion to hire vendors in many different contexts. Some vendors have ongoing, open ended relationships with the Association, such as community managers, accountants and attorneys, and some are engaged on a shorter term, project basis such as plumbers, roofers, and other contractors.

## Selecting the Proper Vendor

It is imperative that the Board engage the community manager to assist with the selection of vendors. The manager will be familiar with the proper vendor for the job to ensure that that vendor, whether contractor, attorney, accountant, have familiarity with unique issues, challenges, and laws that affect community associations. For example, any General Contractor with a Class "B" license is legally allowed to replace the siding or rebuild balconies, but it is imperative that the contractor have experience with working in inhabited, in-service buildings, working with residents, how to interact with the Board and the manager, and have the proper insurance. There is a large industry of vendors who specialize in serving HOAs, and the "regulars" are regulars for a reason.

## Licensing Issues

For any vendor whose work requires a license, it is imperative that the Board ensure that the vendor is properly licensed at the time of the work. Any contractor who contracts to perform work that is valued at \$500 or more for materials and labor must hold a current, valid license in their specialty. Section 7030.5 of the California Business and Professions Code requires that licensed contractors include their license number in "(a) all construction contracts; (b) subcontracts and calls for bid; and (c) all forms advertising, as prescribed by the register of contractors, used by such person." Plumbers, roofers, mold remediation, electricians, and others all are required to have different types of licenses. The status of any contractor's license can be verified on the State

Contractor's Board website ([www.cslb.ca.gov](http://www.cslb.ca.gov)).

## Insurance Issues

Perhaps even more important than proper licensure, is proper insurance. Here are several different types of insurance, and for the Association to be properly protected, the vendor should have not just the proper insurance, but in some instances the Association should be named on the vendor's insurance policy. Of course, this is more important for larger scale projects. For a one-off project or generally minor projects, being named as Additional Insured would be ideal but less critical. Also, it may be impractical to get an "additional insured" for every small project.

The most basic and common type of insurance for a vendor such as a contractor is Commercial General Liability, (commonly referred to as "CGL") insurance. CGL insurance protects against losses involving bodily injury or property damage arising from the contractor's work. For example, if a roofer's negligent work causes roof leaks, allowing water to damage building components, the Association would make a claim against that roofer, and the roofer's CGL insurance policy would pay to settle the claim after an investigation. The contractor's policy should include an endorsement naming the Association as "Additional Insured." This provides additional protection to the association, because the Association is directly insured under the policy for third party claims, such as an owner whose property is damaged by the leak. The Association should also ensure that the contractor's CGL policy does not exclude coverage for multi-family developments.

The contractor's CGL policy should also include Completed Operations coverage. This ensures that any damages that may arise after the work is completed are covered, as opposed to a policy that terminates once the work is complete. This is important because if a new roof were to leak at some point after it was completed and damaged the common areas and an owner's unit, the insurance

*"HIRING VENDORS; Best Practices"; continued on page 7.*

  
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- Expert Paint Project Services and Specifications



*"HIRING VENDORS; Best Practices": continued from page 6.*

coverage would still be in place.

This is also the type of coverage that the original builder of a new project should have in place to resolve a construction defect claim made under the Right to Repair Act ("SB800"). In that context the CGL policy will be in place before the project is built, and that insurance carrier will investigate, defend the builder, and eventually settle the claim.

Errors & Omissions coverage should be maintained by Architects and engineers who prepare specifications for contractors or who consult with the association for either new construction or large repair projects. Malpractice insurance covering other types of

professionals such as attorneys or accountants is also a type of E&O professional liability insurance. E&O insurance covers mistakes made by professionals that cause financial losses, but not property damage or personal injury.

Finally, the Association should ensure that any vendor that has employees maintains Workers' Compensation insurance. Workers' Comp covers an injury by the vendor's employees, such as a roofer falling off the roof. For Associations that have their own insurance employees, such as maintenance workers it is important that the Association have its own Workers' Compensation insurance. Failure to maintain Workers' Comp insurance for Association employees would not prevent an injured employee

from making a Workers' Comp claim against the Association.

### Conclusion

The Board who hires a contractor who is not properly licensed and insured faces potential claims from homeowners for breach of their fiduciary duty and may not have the protection of the Business Judgment Rule, nor the Directors' & Officers liability insurance. This risk becomes real where there is an uninsured loss and the membership is forced to absorb the loss either through a large unbudgeted expense or a Special Assessment.

Michael T. Kennedy, Jr. is a Partner of Berding | Weil law firm. Mr. Kennedy can be reached by email at [mkennedy@berdingweil.com](mailto:mkennedy@berdingweil.com), or by phone at (858) 625-3900. ❖

*"The Joys Of Serving On An HOA Board": continued from page 5.*

community members.

Your job as Board members is to act as *stewards of the community* by 1) enforcing the Association's Governing Documents, 2) oversee the Association's financial resources, 3) insure the Association's assets against loss, and 4) keep the common areas in a state of good repair.

Dr. Lori addressed the *Culture of Confrontation* that we live in and how to develop wisdom in how to deal with *Challenging People*. A

*Challenging Person* can even end up on a HOA Board and sabotage the work of a Board. Always go back to your Board's Mission—Ask the question, "How is addressing this issue about our Mission?" Explaining WHY is key with a *Challenging Person*. Offer them *perspective and feedback*. This can help to diffuse the *Challenging Person*. It's also the practice of good communication, listening, and your teamwork as a Board.

There are 5 Elements in the practicing of successful Teamwork as an HOA Board. They are:

1. Strong team leadership, a good Team Leader is key.
2. Agreed objectives. Make them clear and understandable.
3. Agreed upon processes for getting things done.
4. Lack of Trust among members. It's the #1 reason teams fail.
5. Accountability systems are in place. Encourage everyone to have "a job" on the Board.

A HUGE warning was given about HOA Boards developing "*Group Think*" which is the practice of thinking or making decisions as a group in a way that discourages creativity or individual responsibility. A few people acting as a group can "steamroll" and control a Board, and it is dangerous and will circumvent a successful team and their goal of teamwork. *Group Think* is NOT collaboration. Collaboration encourages individuals to speak up and speak out, to be creative in solutions and to weigh

out many options before coming to a consensus.

Effective Teams or effective HOA Boards do these things:

- Build trust
- Master conflict and see debate as a good thing
- Achieve commitment
- Embrace accountability
- Focus on results - "What is our community going to look like and how do we get there?"

Some of Dr. Lori's teaching/coaching on *running good Board meetings* can apply to any place we are a part of meetings:

- Start on time, be organized, and stick to the Agenda.
- Keep Priorities in order.
- Encourage and Manage Debate find ways to hear everyone's opinion.
- Assign responsibility for every action.
- Focus on Results.

Dr Lori Baker-Schena was very positive and instilled a sense of "*Come on, wouldn't being a Board member be more enjoyable if your approach was to serve, steward the community and find joy in the process?*"

It was a great HOA Board Seminar aimed at equipping B&B Boards to become better stewards as they find *the joy* as volunteers serving the community in which they live. These seminar notes only offer highlights of the seminar. You can request a copy of the power point slides by writing us at [HOANewsletter@bevenandbrock.com](mailto:HOANewsletter@bevenandbrock.com). ❖



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## 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:

#### February 18, 2020: 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](mailto:BoardTraining@bevenandbrock.com). Priority is given to current Beven & Brock managed associations due to space limitations.

#### January 14, 2020 - HOA FREE Board Seminar and Vendor Expo -

See page 1 for more information



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