



# BEVEN & BROCK

## NEWS & VIEWS

### for Homeowner Associations

October 2023

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### Get Ready - MORE RAIN is on the way!

By David Brock, PCAM



Based on forecasted reports we should expect another very wet winter. This article was written in mid-August, before the great tropical storm of August 20. The unprecedented three to four inches of rain we received within 24 hours was certainly a good wake-up call for many. Last year, many of us were caught off-guard as the record breaking wet weather we received was not anticipated. This year, we can be prepared.

According to Patch.com: "The probabilities have reached near certainty that strong El Niño conditions will persist through at least February, which could spur another wet, active, and potentially historic winter in California, the Climate Prediction Center announced this month.

Newly updated forecasts from the Climate Prediction Center upgraded the odds to 95 percent in favor of El Niño hanging on through at least February. The pattern typically reaches peak strength between November and January. Signs of El Niño are all around, especially in the very warm surface temperatures in the Pacific. Forecasters say their

*"Get Ready - MORE RAIN is on the way!": continued on page 6.*

### HOA Homefront - BREAKING NEWS - New Appellate Ruling Okays Board Email Discussions

By Kelly G. Richardson, Esq.



There is a transparency law within the Davis-Stirling Act called the "Open Meeting Act," containing requirements regarding governance transparency. For years, many HOA lawyers have discouraged their clients' boards from deliberating in email regarding HOA issues, because it seemed to violate the Open Meeting Act. The Act at Civil Code Section 4910 bars taking action outside of board meetings except for emergencies, and bars conducting meetings via electronic mail. This seemed to bar board email discussions, but that has now changed.

On August 25, 2023, the appellate court in San Diego County issued its opinion in LNSU #1 LLC v. Alta Del Mar Coastal Collection Community Association. Because the decision is "certified for publication" it is precedent throughout the state. In the LNSU #1 case, 2 of the owners in a 10-unit HOA challenged the board's discussion of several HOA business items in emails, including items involving the two appealing homeowners.

The court ruled that exchanging emails is outside the Civil Code 4090's definition of a "board meeting" since the definition includes in-person or teleconference gatherings, and because the directors were not "congregating" when they sent the emails. The court further ruled that

discussing HOA business via email is not barred by Civil Code 4910's prohibition of taking action outside of board meetings but that action, meaning voting, is different.

However, HOA boards and managers should avoid email deliberations for several reasons.

First, this case presents a new interpretation of the term "board meeting" definition. Other appellate courts in California could take a different interpretation. Additionally, the subject might be taken up by the state Supreme Court and weaken or overrule this ruling.

Second, email deliberations are not subject to member review and such emails are not included in the documents, which homeowners may request to review. Consequently, the board's transparency suffers, as it could prove all too easy to pre-discuss matters on upcoming agendas. Homeowners will trust the board more if they know the board has the discipline to wait until meetings to discuss things.

Third, emails are evidence. Emails are not privileged unless legal counsel is involved. They can be forced to be disclosed by subpoena or litigation disclosure demand. Emails, unlike oral remarks, are a permanent record of what someone says. Therefore, directors must be far more restrained in their written comments - what would a judge or jury say if they read that email?

*"HOA Homefront - BREAKING NEWS...": continued on page 7.*

# Building a Safer Tomorrow: Understanding the Updated 2023 Reserve Study Standards

By Robert Nordlund, PE, RS, Association Reserves, Founder/CEO

The future is built on the little decisions we make every day. The question is... what kind of future are we building? After the tragic collapse of Champlain Towers South in June of 2021 that claimed 98 lives, it became patently obvious that seemingly simple budget decisions have life-safety consequences. National Reserve Study Standards were built in 1998 on financial principles alone. But Champlain Towers South taught us that Reserve Studies influence life-safety. So those Reserve Study Standards needed to be adjusted in light of that higher responsibility.

Mother Nature and Father Time are formidable adversaries

to anything on this planet. Boards need to appreciate that every day, week, and month that is not spent offsetting ongoing deterioration draws expensive (and potentially dangerous) deterioration and special assessments closer to their doorsteps. Moving forward successfully to the future thus requires a joint effort between the Reserve Specialist and the Board.

Building a safer tomorrow takes ongoing preventive maintenance, effective funding and spending of Reserves, and digging deeper to learn a building's specific structural needs (issues beyond the scope of a Reserve Study provider). Building a safer tomorrow also means looking farther than 20 years into the future, and changing the rules so Boards can pay for significant preventive maintenance projects or one-time repair projects with Reserve funds. So with all these big changes, how will updated Standards affect your next Reserve Study?

First, understand that your Reserve Study provider (your credentialed "Reserve Specialist", or "RS"), remains committed to guide your association safely and successfully to the future. That has not changed. The fundamentals of a "Full" Reserve Study (create from a blank slate), Update With-Site-Visit, and Update No-Site-Visit remain the cornerstone three Levels of Service. Diligent site inspections, supplemented with regular No-Site-Visit updates in the in-between years, guide your association forward through periods of high inflation, unexpected expenses, funding shortfalls, and all other aspects of "real life".

What Has Changed? Reserve Funding plans nationwide are now required to extend 30 years into the future. While a 30-yr Funding Plan is standard in California (Civil Code §5300.b.4 and §5550.b.1), much of the country was missing everything past 20 years, meaning many associations were not planning for such projects as roofing, elevator modernization, siding, and asphalt

resurfacing.

Expect Increased Disclosures and Documentation. Reserve Study providers will begin asking for your preventive maintenance plans, infrastructure reports, and component-specific assessments from subject matter experts. This move helps the Reserve Study provider learn what is being done on an ongoing basis to maintain the property, learn about potential major issues outside their scope of expertise, and develop the cash flow plan to get necessary projects done before they grow in size and cost. In addition to making better property care and Reserve planning decisions based on these plans and reports, board members should gain more protection since their budget decisions will be guided by outside experts.

The four-part test for determining if a project is appropriate for Reserves has been expanded and simplified to a three-part test. This allows for more one-time projects, long-life projects (beyond 30 years), and even large preventive maintenance projects to be funded through Reserves. Examples include specialty investigations or inspections, and structural component repairs. This change ensures that major expenses are adequately funded through reserves, allowing associations to prepare for significant future projects with greater financial certainty.

Reserve Study "Best Practice" is now clearly stated to have a site-inspection-based Reserve Study at least every third year. Again, while standard in California for many years (CA Civil Code §5550.a), much of the country has been updating their Reserve Study as infrequently as every five or ten years. Such dated information is of little value to the budget planning process, or in keeping the building




*"Building a Safer Tomorrow: Understanding...": continued on page 7.*

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# Enhancing Community Appeal: The Importance of Exterior Painting for HOAs

Evan Murray, President, Precision Painting & Reconstruction



In any homeowners association (HOA), maintaining the aesthetic appeal of the community is crucial. One aspect that significantly contributes to the overall appearance and value of HOA properties is exterior painting. A well-executed exterior paint job not only enhances the visual appeal but also protects and preserves the buildings. In this article, we will explore the importance of exterior painting for HOAs and provide insights on best practices for successful painting projects.

1. **Curb Appeal and Property Value:** Exterior painting plays a vital role in boosting curb appeal, making it an essential investment for HOAs. A fresh coat of paint can transform the look of a building, making it more inviting and visually appealing. Improved curb appeal not only creates a positive first impression for residents and visitors but also positively impacts property values within the community.
2. **Protection Against the Elements:** HOA properties are exposed to various weather conditions throughout the year, including rain, sun, wind, and snow. Exterior paint acts as a protective barrier against these elements, shielding the building's surfaces from moisture, UV rays, and other potential damage. Regularly painting the exteriors helps prevent issues such as wood rot, mold growth, and deterioration, thereby extending the lifespan of the structures.
3. **Preserving Architectural Integrity:** Many HOA communities have distinct architectural styles and design elements that give them their unique character. Proper exterior painting ensures that these architectural features are preserved and maintained.

By following established guidelines and color schemes, HOAs can maintain a cohesive and harmonious visual appearance throughout the community.

4. **Compliance with HOA Regulations:** HOAs often have specific guidelines and regulations regarding exterior maintenance, including painting. Adhering to these guidelines is important to maintain a sense of uniformity and uphold community standards. Regularly scheduled painting projects allow HOAs to ensure that all buildings within the community are properly maintained and meet the established criteria.
5. **Building and Resident Satisfaction:** A well-maintained exterior not only benefits the overall community but also contributes to the satisfaction of individual residents. Living in a visually appealing environment promotes a positive atmosphere and a sense of pride among homeowners. Regularly updating the paint on buildings can also provide residents with a fresh and renewed living experience.

## Best Practices for Exterior Painting Projects in HOAs:

- A. **Planning and Budgeting:** HOAs should create a long-term plan for exterior painting projects, considering the needs of each building within the community. Allocating a sufficient budget and setting a realistic time-frame are crucial for successful execution.
- B. **Professional Painting Contractors:** Engaging experienced and reputable painting contractors ensures high-quality workmanship and adherence to regulatory guidelines. Requesting references, reviewing portfolios, and obtaining multiple bids help in selecting the

*"Enhancing Community Appeal..." continued on page 7.*



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## Possibly, *The Cure* for Apathy!

by David Brock, PCAM

The most common complaint raised in common-interest-developments pertains to the lack of community involvement in the association. Obtaining a quorum for the annual meeting is a struggle for many associations. Solutions to difficult problems are seldom easy, but there may be a solution for this issue that is not at all difficult and at the same time, enjoyable.

**Plan a social event during the holiday season.**

It could be in the common area or a progressive event in individual homes if you have willing owners. It could be as simple as having the residents bring their own main dish, and then something to share -- such as an appetizer, a bag of chips and a dip, a bottle of wine, or a six-pack.

Community happens best when people get together and share food and drink. Through conversation we often discover that we have something in common with someone that that we would have never known otherwise. Sharing a meal and conversation creates community, which grows deeper and better in time. You will find that some owners will begin to take an interest in the issues of the community. You will also find that areas of conflict that arise in many communities won't be the first way that people engage but there will be a base of relationship that was built around burgers and a beer that will help lighten any conflict.

Community isn't just about the owners gathering, but rather *all of the residents*. Yes, this includes the renters, too. Often, it seems that the renters in the community are blamed for *not following the rules*. Building a relationship with the renters, in a social way, will benefit the overall community in the long run. Gathering in this way doesn't mean that you will be discussing HOA business. Ease everyone's minds by informing them there will be no votes taken, no official

business occurring, and that having renters attend is welcomed. For that matter, *send an invite to the owners who live off-site*. They may not attend, but if they do come this will also benefit the community in the future.

In addition to food, maybe



someone has a ping-pong table, badminton set, or a corn-hole game that isn't getting much use. Any game that will help people mingle and talk is great ("Uno anyone?!"). Having ground rules for conversation such as "No HOA Business Spoken Here, please...", as well as *no politics or contentious issues of the day*. We're just eating, playing games, and getting to know one another - that's *the agenda* for this time.

Some will say, "*But not all of the residents will show up, or we still won't have very many that will attend.*" And that's okay. It's always hard to start a *new thing*, and you'll never know unless you try. "*Yes, but some people are very introverted, and going to an event like this would be very low on their list.*" *Hey, it's all good.* Those who come will have a great time and the Association will benefit as a result. Word will spread that it was a good time, and in fact, set the date for the next community gathering so people can calendar it.

Take the risk and take a picture and send it to us - at "[HOANewsletter@bevenandbrock.com](mailto:HOANewsletter@bevenandbrock.com)." ❖

# HOA Leadership: A Great Challenge!

By David Brock, PCAM

During October and November most HOA Boards are preparing the annual budget for the next year. For calendar year associations, the mailing deadline is December 1. Since board members are also owners in the community, they must wear two hats. The budget process requires that board members take a serious look at the financial performance and needs of the community over the current year and make a realistic projection of the direction of the financial status of the community over the next year.

As fiduciaries of the Association, board members cannot simply take the position that assessments will not increase, without reviewing the performance of the current year and ideally, the last 12 months. The board should also review the recommendations made by the reserve study provider. Boards who have NOT taken this approach in prior years are now having to “face the music” and impose large increases and impose special assessments to address increased operating expenses, deferred maintenance, and mandatory balcony inspections.

These conversations, and the budget process, are never easy and can easily create conflict within the board and community. Board members are required to address the needs of the association and put aside their own agenda on every issue they deal with, especially financial issues.

This fiduciary relationship is governed by the statutory standard that requires directors to exercise **due care** and **undivided loyalty** for the best interests of the corporation. In board discussions involving the approval of a budget, board members MUST set aside their own personal preferences.

Sadly, some board members have difficulty in this process to do their duty to evaluate the financial performance of the association. Ignoring the duty of objectively reviewing the prior financial reports and assessing the need to increase

assessments is actually a disservice to the community they serve and will lead to some difficult days ahead. It is not possible to escape the current reality of increasing costs in many areas.

Because of rising costs, some board members feel that they should not increase HOA assessments. Unfortunately, this is a short-sighted approach and not the proper business-like way to manage the finances of the HOA. While HOA's are typically non-profit corporations, they are not *charities* which need to be sensitive to the needs of the members.


For some associations, the practice of not increasing assessments as needed is long-standing. In the past year, we have seen associations who have **not** increased assessments and have deferred repairs. The problem is compounded by the current *insurance crisis* (See <https://www.bevenandbrock.com/wp-content/uploads/2023/09/July2023.pdf>) and policies are being cancelled for various reasons. Not only is the replacement coverage significantly more expensive, but insurance carriers are now also asking about the status of long overdue maintenance repairs.

Associations who are facing these issues are finding that their only choice is to impose emergency special assessments to pay routine operating bills, make repairs and buy insurance. We are learning now that special assessments will be a factor when lenders are considering making loans to prospective buyers.

No one likes the idea of increasing assessments, but there is little to no control in the escalating cost of doing business in this current economy. Efforts can be made to shave costs here and there, but with increasing insurance rates, and utilities which are outside our control, there are few if any options.

Since 2019, boards of directors have been required to review their association's financial records monthly. This includes six areas, but for the purpose of understanding

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the prior financial performance, boards must review the current year's actual operating revenues

*"HOA Leadership: A Great Challenge!"  
continued on page 6.*



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increasing confidence is due to a few consistent factors, including surface temperatures in the tropical Pacific, weaker pressure in the eastern Pacific, and higher pressure in the western Pacific."

Every property is unique and there are always unusual leaks that occur especially in very wet winters in Southern California. But there are some standard items that many properties will want to address before the season starts. Here are a few that should be on your radar:

1. If you have sump pumps in the underground garages or driveways, test and service them to make sure they will function when needed.
2. Clear out rain gutters of leaves and dirt. Even if you have the rain gutter screens, they should still be cleaned as dirt and small debris can get through the screen and clog the downspout.
3. If you have surface (ground level) drains or drains in balconies and roofs, have them snaked to make sure they will drain properly.
4. Make sure that there are no leaves on the roof that can block drains.
5. Trim trees that will hit the building during windy conditions.
6. Ask your roofer to seal the pipes that you have on your roof. The mastic that seals the pipes does deteriorate in the hot summer sun.
7. Seal the base of sliding glass doors that lead to patios. Water can often seep in underneath doors.

8. If you have planters in a courtyard that leaked last year and if there are parking areas below, you may want to tarp the planters if you can, until they get repaired.

9. Perform regular roof maintenance on your roof - it will extend the life of this important and expensive asset.

Most importantly, if you became aware of a problem from last year that has not yet been repaired, it is important to repair it immediately. Failure to do so can increase the potential of a claim from an impacted owner for negligence.

Given the current conditions in the insurance market, it is not a good idea to file claims as that will increase the risk of a non-renewal by the carrier. Replacing non-renewed insurance is very expensive.

It is always good to encourage owners to purchase their own individual policy, called an HO-6 policy, which is a great value. There are many benefits to this individual policy, and it may help reduce expensive claims on the master policy. For more information, see the article in the April 2023 newsletter: <https://www.bevenandbrock.com/April2023.pdf>.

While the items indicated here will require some expenditure, the cost to perform these items will be a fraction of the cost it will be to address the damage caused by the rain.

In the words of the Boy Scouts motto: "Be prepared for life, happily and without regret, knowing that you have done your best". We can add: "Be prepared for rain, so that you can enjoy and not dread the rain". ❖

*"HOA Leadership: A Great Challenge!": continued from page 5.*

and expenses compared to the current year's budget, This review is very important and requires that the board receive and review the "budget comparison" report. This report is an early warning sign that there is potential for the year to end in a deficit position. In these situations, boards may need to undertake a mid-year adjustment in the assessments to avoid having

a special assessment in the future. As the monthly review is required, the need to increase assessments should not come as a surprise at budget time.

In closing, the challenges are understandably difficult, but it is essential to address the financial needs of your community honestly for both the issues for the coming year, but also address the long-term need to fund the reserve study recommendations. ❖

*"HOA Homefront - BREAKING NEWS...": continued from page 1.*

Fourth, and not least, do directors want to be on duty 24 hours 7 days a week? Strict compliance with the Open Meeting Act helps to protect directors' off-duty time. I often receive emails from client directors feeling intimidated or even harassed by other directors who bombard their board colleagues with email suggestions, ideas, and opinions at all hours.

Often clients tell me they

minimize open meeting discussions due to member disruption. My response is that the HOA needs to get its meetings in order, and should avoid the temptation to avoid open discussion.

This new judicial interpretation should not encourage opening the floodgates for boards to discuss anything and everything by email and then wait for the formality of a board vote in the board meeting. Consider using email only to

relay information and not to relay opinions, saving the discussions for the board meeting.

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

*"Building a Safer Tomorrow: Understanding...": continued from page 2. or its owners safe.*

This shift in reserve study standards comes as a welcome change for community associations across the country. Reserve Study providers have raised their standards about gathering information and guiding the budget and cash flow plans of associations to include major preventive maintenance and structural integrity projects. We cannot overstate the reality that boards continuing to "kick the can down the road", not funding and performing necessary repair and replacement projects, will only result in more tragedies. Reserve

planning is more than a budget, curb appeal, or even property value decision.

We all need to participate in decisions that offset deterioration, physically protect our association homes and maintain their property values, and sustain the lives of those who reside in them. By embracing these new standards with increased documentation, broader component selection, and regular site inspections, boards will be able to make better-informed decisions that create a brighter future for community associations nationwide.

Additional Resources: Find below a link to the April 2020

Foundation For Community Association Research and its report called Breaking Point: Examining Aging Infrastructure in Community Associations.

<https://foundation.caionline.org/research/aging-infrastructure/>

Find the updated 2023 Reserve Study Standards here:

<https://www.caionline.org/LearningCenter/credentials/Documents/CAI%20Reserve%20Study%20Standards%20July%202023%20-%20FINAL.pdf>

[www.ReserveStudy.com](http://www.ReserveStudy.com) ❖

*"Enhancing Community Appeal...": continued from page 3.*

right contractor for the job.

C. Color Selection and Approval: HOA's should establish a color palette or scheme that aligns with the community's overall aesthetic. Implementing a well-defined approval process for color selection ensures consistency and prevents any deviations that may compromise the community's

visual harmony.

D. Regular Maintenance: Regular inspections and maintenance of painted surfaces are essential to address any issues promptly. Touch-ups, cleaning, and periodic repainting when necessary help maintain the integrity of the exteriors.

Exterior painting is a vital component of maintaining the visual appeal, value, and integrity of HOA communities. By investing

in regular painting projects, HOA's can enhance curb appeal, protect buildings from environmental damage, preserve architectural character, and promote resident satisfaction. Strategic planning, adherence to regulations, and professional execution are key to successful exterior painting projects in HOA's, ensuring a vibrant and welcoming community for all residents. ❖

### 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.

### UPCOMING DATES:

**Date: Board Training - Thursday, October 26, 2023 (Hybrid)**

<https://www.bevenandbrock.com/wp-content/uploads/2023/09/BoardTrainingFlyer.pdf>

Free three-hour training course for current and prospective HOA board members. A course syllabus, informational handouts, and Certificate of Completion are provided. This CAI-sanctioned class is taught by its co-creator Kelly Richardson, Esq. CCAL of Richardson Ober, 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.

### A 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.



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