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NEWS & VIEWS

for Homeowner Associations

April 2021

Providing HOA News and Views since 1990

In Appreciation of HOA Board Volunteers!

By David Brock, PCAM

For the past several years, we have recognized hundreds of great HOA volunteer board members with whom we get to serve. We have stated that HOA Board members are *the best volunteers* because they live in the community in which they serve. However, in a year where we are all attempting to survive and thrive in the midst of a pandemic, we would be remiss to not acknowledge the thousands of volunteers who work in hospitals and assisted living environments. We “take our hats off to you” and applaud you for your service on an HOA board as well as to those who risk their lives on the front lines of this pandemic. During one week of April, we acknowledge your tireless service and we THANK YOU for giving of your personal time to help others in your community.



National Volunteer Week is April 18-24, 2021. It is an annual celebration (observed in many countries), to promote and show appreciation for volunteerism

“In Appreciation of HOA Board Volunteers!”: continued on page 2.

2021 BEVEN & BROCK LAW SEMINAR

DATE & TIME: APRIL 20, 2021; TIME: 7 PM



While we all would prefer a traditional Beven & Brock live seminar event, there are major issues which our clients and friends need to hear which cannot wait for the “green light” for large gatherings. So, we are joining the technical revolution the pandemic has required, and are pleased to announce this upcoming presentation. This will be a “Zoom” event, and you may register by going to:

www.bevenandbrock.com/2021LawSeminar.

There will be time allotted for audience questions and we will have the traditional “door” prizes. You will need to provide your own refreshments.

TOPICS TO BE ADDRESSED:

- **Rental Restrictions - What every Board needs to know! Learn how to comply with the new Civil Code 4741.**
- **The “Balcony” law - SB 326 became law in 2020, and the 1/1/25 deadline is less than four years away. Learn what is involved, and how to prepare for this new requirement!**
- **Election Law - Major HOA election reforms became law in 2020, and HOAs are still struggling to understand and comply with the major changes in HOA election processes. Hear the highlights and the potential pitfalls of these changes.**

SPEAKERS:



KELLY G. RICHARDSON, CCAL

KELLY G. RICHARDSON is co-founder and Partner of Richardson | Ober | DeNichilo. In practice since 1983, Kelly has a national reputation as a homeowner association attorney, was CAI’s 2016 National President, and is a syndicated weekly columnist on HOA issues in 14 publications.

MICHAEL T. KENNEDY, JR.

MICHAEL T. KENNEDY, JR. is a Partner of Berding | Weil in the litigation department. Michael has been involved in residential and commercial construction litigation for over 20 years, dating to his time working full time during law school for a firm representing homeowners in construction defect matters.



"In Appreciation of HOA Board Volunteers!": continued from page 1.

and volunteering. In the United States it is organized by the Points of Light foundation. Their website is <https://www.pointsoflight.org/>

The question is always, how can we get more people to volunteer and help lighten the load? The excuses are plentiful, and sometimes valid. It is understandable that volunteers get tired, or sell their unit and move. Finding new volunteers is a challenge for almost every association.

The best practice for HOA leadership is a gradual migration of owners coming on and going off the Board. Abrupt changes such as board members resigning between annual elections or in mass when the election occurs, causes chaos in the community. Continuity of board members is critical. While you may not have plans to "retire" from the board it never hurts to keep your eyes open for future board members. Here are some

ideas to "market" Board service in the community:

1. Celebrate accomplishments in the community.
2. Gather owners together (post COVID) to enjoy a potluck and casual time together.
3. Welcome input and encourage participation at board and annual meetings.
4. Listen to the needs of the community and make efforts to engage owners in the process of improvements.
5. Get to know new owners in the community as they usually have the greatest amount of interest in becoming involved in their new community.
6. Finally, don't make the job appear more difficult than it is. It doesn't have to be hard and don't make it look difficult.



You may have your own ideas as well, and we would welcome your great ideas that can be shared with other boards. Feel free to write us at HOANewsletter@bevenandbrock.com.

In closing, remember that you are appreciated for your service to your community. ❖

Improve Your Board Meetings: Drafting a Code of Conduct for the Board of Directors

By: Matt D. Ober



A common frustration for managers and association boards of directors is dealing with issues that arise out of conflict with individual board members. At some point we have all heard of the board member who is hostile, disagreeable or the proverbial "loose cannon." Other boards have struggled with how to rein in the director who consistently advances his or her own agenda without regard to the best interests of the association. Finally, there are directors elected, for whatever reason, who feel compelled to reveal confidential information about the association to third parties. Unfortunately, the Corporations Code does not yet contain a provision allowing the board to remove a director for behaving badly. The slap on the wrist that follows improper

disclosure or misconduct does little to undo the damage already done.

There are, however, viable options available to managers and boards to address misconduct. In most cases, the most direct option to control improper behavior is censure. There is no more effective method of controlling improper behavior than by confrontation by one's own peers. Like any disciplinary hearing, the director should be advised of the improper conduct committed and be provided with an opportunity to explain his or her actions. The director should also be cautioned that continued misconduct will result in further disciplinary action by the board to protect the association and could include obtaining a court order seeking to enjoin their conduct detrimental to the association.

If the conduct committed is improper disclosure of confidential information, the best option is to exclude that board member from

executive session meetings, or from receiving executive session material or both. Such an extraordinary precaution is justified by the board's fiduciary obligation to protect the association. Providing confidential information to a director with knowledge that the director will share that information with a non-board member subjects the association to unreasonable risk. If the issue is severe enough, make sure the board consults with association legal counsel about the potential ramifications. If the issue relates to litigation the board can form a litigation committee and specifically exclude the offending board member from the committee.

A director must refrain from misconduct and improper disclosure of confidential information. In addition, each director has an affirmative obligation to monitor the conduct of every other director

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*"Improve Your Board Meetings...":
continued from page 2.*

to ensure that all directors act in furtherance of his or her fiduciary obligation to the association. A board that regulates itself will send a positive message to the community that its association is governed by those with a high regard for the best interests of the community.

Understandably, a director may be uncomfortable with the task of disciplining a fellow director. Therefore, although the Corporations Code already establishes a bench mark for acceptable conduct by board members, your association should consider establishing a code of conduct which outlines the obligations of a director, and the consequences of failing to meet those obligations. If the board chooses to require a code of conduct it should be adopted and in place before an issue arises. That said, associations should not hesitate to implement one at the sign of a problem. If used, a code of conduct should include the following obligations:

- To maintain the confidentiality of executive session information;
- To put personal interests aside and advance the best interests of the association;
- To respect, abide by, and carry out the decisions of the majority of the board; and
- To treat both fellow directors and homeowners with respect, and approach board decisions prepared and with an objective, open mind.

Boards of directors are encouraged to adopt a code that meets the needs of their

associations. The directors should evaluate those issues that have historically been problems and reach a consensus on what to include in the code of conduct. The more agreement there is among directors about what to include in the code, the more likely directors will comply. Once the code is completed, a resolution should be drafted by legal counsel detailing among other things, the reasons for the code, and the board should vote to adopt the code of conduct for the association. Until revised or removed, that code will govern the conduct of all current and future directors. Like all rules, the code of conduct must be enforced fairly, uniformly and consistently.

Directors and homeowners should be reminded of the code of conduct for board members on an annual basis, prior to director elections. Community association managers should be prepared to review the code of conduct with the new board following their election and ensure that each director signs a simple document prepared by legal counsel, indicating his or her agreement to its provisions and acknowledging the consequences of noncompliance. If, however, a board member refuses to sign a code of conduct, he or she cannot be forced to do so or resign, unless the Association's bylaws require same.

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LEGISLATIVE BILLS TO WATCH in 2021

Unlike last year, 2021 will be a busy year in the California Legislature. In a typical year, there are over two thousand bills introduced. The California Legislative Action Committee (CLAC) is already busy with reviewing how those bills will impact Common-Interest-Developments. The lobbyist that we

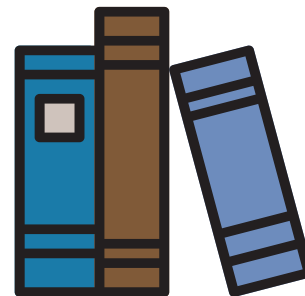
work with through the Community Associations Institute and the local committees will be working hard this year. Some of the priorities are to work on cleaning up AB3182 (Balcony bill), AB2912 the financial security bill from two years ago, and the recent election law, as well as working on a new bill for virtual meetings.

A bill has been introduced (AB391) which would establish alternative teleconferencing procedures for a board meeting or a meeting of the members if the common interest development is in an area affected by a federal, state, or local emergency. While most CID Boards that have met during the pandemic have met virtually, the bill would officially sanction those meetings. It is our hope and expectation that THE legislature will make this permanent after the pandemic is over.

A point of good news is AB 502, which if passed by the California Legislature, and signed by the Governor will significantly alter, in a favorable way, how elections are handled in common-interest-developments. The current law provides for the election and removal of directors of the Board by secret ballot. A recent law allowed for director nominees to be considered elected by acclamation if the number of director nominees is not more than the number of vacancies to be elected, **and** the

association includes 6,000 or more units.

AB 502 would delete the requirement that the association includes 6,000 or more units. If it passes, this bill would amend Section 5100 of the Civil Code. This bill would save a majority of associations hundreds of dollars per year. A vast majority of HOA elections do not have more candidates than seats available to be filled.



We encourage you to reach out to your legislators to voice your support of this bill and we will update you in future newsletters. If you are not sure who your California legislators are, this site will help you: <http://findyourrep.legislature.ca.gov/>.

We would always encourage your association's financial donation to CLAC (California Legislation Action Committee) to help support the great work they do all year which benefits the common interest development world. You can learn more about CLAC at <https://caiclac.com/>. ❖



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Pursuing Board Success – It's NOT A Full-Time Job!

HOA Board service is often viewed as a “thankless job” that no one wants. Those with that perception are not necessarily wrong. Since the structure and success of common-interest-developments depend on a functioning board of three to five members, volunteers are needed. If you are serving on your HOA Board, there are some tangible steps you can take to keep it from ruling your life.

Before you drop to the floor in belly-aching laughter over this thought, read this article. Here is some advice for Board members to take on this role and still have time to do what they enjoy?

First, it is important to understand your role. Are you the on-site manager, building supervisor, the “enforcer” or “none of the above”? Go with the “none of the above”. You are not expected to know everything about your community, and how to fix things that are broken? (Note that if your Association is self-managed, this doesn't apply to you.)

What **is** your role then? As a Board member of a HOA, you are a “team” member with other owners, with whom you collaborate on making the *best possible decisions* for the community. Your chief involvement is to meet regularly as the needs of the community dictate and utilize vendors to help guide you through the “technical” aspects of the community. If you have properly screened your vendors, you do not have to know more than your expert “vendors”. You should be able to trust their advice.

Understanding boundaries is important. Since this is your home, this is especially challenging but not impossible. Unless of course, you have no life, no family, no job, no hobbies, and you need the HOA to be your life.


Secondly, e-mail is a great thing, but it can become out of control. Most everyone would prefer fewer emails, not more of them. Some people may not realize this but

email is **not** a legally valid means of conducting Board business. Why? Because ALL decisions of a Board need to be made in a properly called Board meeting where owners may attend, listen to the Board, and express their views. Emails between meetings should be very inconsequential. This may sound like we have just taken a step back to the 90's but it's true. And it should help Boards understand that they do not have to be on call 24 hours a day. In the case of an emergency, an email is great but keep it brief and to the point. Who likes long-winded emails anyway?

Third, realize that when you are on the Board, you cannot speak for the Board, unless the board has given you that authority. This is actually great news! Because when you are in a tough spot and an owner is upset with you for no good reason, you can deflect to the Board and say it is **not** your decision. You can hide behind the authority of the Board.

Finally, attitude is everything. There are a variety of ways to approach your role as a Board member and only a few of them will make this more enjoyable. Kindness and compassion while being business minded is not only possible but essential. Boards who operate in a dictatorial fashion with both their owners and vendors will find their job much more difficult over time. The owners are your constituents and those you are called to represent. Well-chosen vendors should make your Board service more manageable and they will respond better when you treat them as a team member.

In summary, serving on your HOA Board while not losing your mind can happen. A mission we have is to work toward the goal that Board service is something that reasonably minded people can do while still enjoying their life as much as anyone. We believe it is possible. ❖



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Rentals In HOA's - Impacts And Guidance Regarding The New Law

The California legislature has passed, and the Governor has signed, AB 3182 which requires all associations to allow at least 25% rentals. It is now an appropriate time to address the *best practices* for HOA Boards, as well as owners who rent (aka "investor owners") and look at the best practices for this issue.

To summarize the law which is now Civil Code as Sections 4740 and 4741, common interest developments may not have any rental restriction that limits less than 25% of the association in renting their units. In addition, any clause that restricts rentals is void. Some associations have "seasoning clauses" which requires owners to occupy for a period prior to renting their units and these clauses are now unenforceable. Any documents that contain language which contradicts this law will need to be amended prior to December 31, 2021.

Many associations have adopted rental restrictions as they perceive that tenants are responsible for many of the problems they experience in their association. In addition, many investor-owners are perceived as not caring about the community and just wanting the highest rental possible. While these may be valid perceptions, the reality is that not all tenants and investor-owners are bad for the community. This may be a case where *a few bad apples spoil the bunch*.

The Board is not powerless in this situation. There are steps that Boards can take to help this situation. The Board will need to act proactively in addressing these issues in their community in order to *maintain, protect and enhance* the Association. Consider the following ideas for possible implementation in your community.

For investor-owners:

When you rent your unit out in an HOA, you become responsible

for the actions of your tenants. The association has the ability to fine you, not your tenant, if they break the association rules. The best way to avoid fines from the association is take every precaution to make sure you are renting to the "perfect" tenant. That said, investor-owners should do the following:

- A. The law requires that "prior to renting or leasing, an owner shall provide the association verification of the date the owner acquired title and the name and contact information of the prospective tenant or lessee or the prospective tenant's or lessee's representative."
- B. At Beven & Brock, with over forty years of rental management experience, we rely on sound business judgment based on verifiable facts when deciding whom we will accept as a tenant. To help make these decisions, we check an applicant's credit and their rental, employment, and banking histories before renting to them. The downside risk of not doing this can end up costing the owner thousands in repairing damage to the property and unpaid rent.
- C. Screening your prospective renter for a unit in an HOA takes on an added element. Parking in every HOA can be challenging when a tenant has more vehicles than the allocated spaces. A tenant who has three vehicles, when the unit only has two spaces, will be problematic from the beginning. Make sure you understand how many vehicles your future tenant will have. Other issues that create problems in HOA's can be classified as "lifestyle issues" regarding noise and large gatherings. It is strongly recommended that as a part of your screening process, you contact their current or prior landlord for a reference.
- D. Provide a copy of the



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Association's "Rules and Regulations" prior to the tenant signing the lease. It should be expected that the prospective tenants will have read the rules prior to signing the lease and arranging for their move. The Association "Rules and Regulations" must be included with the lease agreement and signed by the tenant as having received and read. Review the rules with the prospective tenants and ask them if they see any concerns with complying with the association rules. As stated earlier the owner is responsible when your tenants violate the rules.

E. As the owner it is best to live locally (i.e. within thirty minutes of the property) or if this is not possible, then locate a local representative to respond to issues related to the property. This could be a family member, a trusted friend or a local property manager. This is

important in case there are any maintenance emergencies or in case the Association needs to access the unit on short notice and the tenant is not available.

F. Finally, as an owner who does not live on site, your participation in the Association is important for your investment. Do not take the view that because you do not live on site, you don't need to be involved with the Association.

Now to the steps that Association Boards can take in addressing issues pertaining to rental units in the property.

2. Require owners to provide the name, email and cell phone number of a local contact for the owner.
3. Require owners to provide names, email and cell phone number for at least one occupant within ten days of occupancy.



A. An objective of Board members is to protect the value of the investment for all owners, whether or not they live on the property. All owners benefit equally from the decisions of the Board. There is no reason why investor-owners should not be considered as prospective Board members. Every owner benefits when the property is maintained properly. Let us not allow investor-owners off the hook. We can expect owners who rent to serve on the Board.

B. As with many practical issues, the key is in the "Rules and Regulations" of the community. If they don't address these issues already, add them to the "rules" and do that by following the legal steps of amending rules. Rules that Boards should consider are the following:

C. Tenants do not have a financial interest in the property however they have an "emotional interest". This is their home too. While they are tenants, they still want a safe and trouble-free environment in which to live. While tenants are only renting, they are also your neighbors. If your community has social events during the year, invite the tenants. Why not? Unless the owner gives their tenant a "power of attorney" they have no voice in the business of the association, but they are a part of the community and should be treated accordingly.

In closing, while tenants and investor-owners have historically posed a challenge in HOA's the issue doesn't have to leave Associations without options. As an owner occupant, you may not know when life circumstances will change and your best choice could be to rent out your unit.

Associations can and should protect the interest of all owners by reviewing their rules and adopting fair and reasonable restrictions that protect the interests of the Association. ❖

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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 events: None scheduled at this time.

Board Training (not currently scheduled)

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 DeNichilo LLP, 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. You may get on the waiting list and when we set new dates we can let you know.

We will provide updated class dates for 2021 when available.

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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