

Beven & Brock Property Management HOA Virtual Law Seminar

Tuesday April 20, 2021

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BEVEN AND BROCK CLIENTS (AND FRIENDS) SEMINAR

LEGAL UPDATE - ELECTIONS, BALCONY INSPECTIONS, AND RENTALS

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Tonight's Presenters:

- Michael T. Kennedy, Esq.
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- David Brock, PCAM
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- Kelly G. Richardson, Esq., CCAL

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**HOA elections –
continuing issues**

Quick recap of what changed in 2020 for HOA elections:

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- Major change in election timetable – 90+ days for board elections
- Only five eligibility standards, one mandatory, four optional
- Suspension of member voting rights not allowed.
- Inspector of Elections cannot be someone currently under contract (so HOA manager or attorney ineligible)
- Membership roster subject to inspection now includes email addresses
- IDR availability to disqualified candidates
- Requirement to update election rules
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Common conflicts with HOA documents

Suspension of member voting rights

Board eligibility standards outside of those permitted

- [term limits, actively litigating with HOA, unresolved violations, etc]

Bylaws allowing non-owners to serve as Directors

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Continuing confusion regarding elections

Not all elections require 90+ day process

Not all elections involve the secret ballot 30-day process

Election rules not yet updated so no election?

Any of the four optional eligibility requirements must be adopted by rule amendment.

Nominations from floor? Nominations after close of nominations?
Handling elections at a time when gatherings are not allowed?

6 **Is Sacramento going to help?**

Assembly Bill 502 – elections by acclamation
So far is stuck in Housing & Community Development Committee

Senate Bill 432 – HOA term limits OK.
Passed Senate Housing Committee Feb 25, pending hearing by Senate Judiciary Committee

[It may be August before we know if the help will arrive.... or not

7 **Introduction**

8 **DECK/BALCONY COLLAPSES: BERKELEY, FOLSOM, MOUNTAIN VIEW, ETC.**

DEATH AND INJURIES

**FROM THE OUTSIDE DO THESE
BALCONIES LOOK DANGEROUS?**

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16 **What Must Be Inspected Under
SB 326 Civil Code §5551?**

Not just balconies! Includes all load bearing elements/waterproofing systems
Load bearing elements - extend beyond exterior walls
Include balconies, stairways, railings providing structural support with wood elements
Associated waterproofing - flashing, membranes, coatings and protective sealants
Includes concealed elements inside soffits or within surrounding stucco walls

17 **Who Does the Inspections and What Reports are Issued?**

18 **What Does the Expert Determine?**

19 **What Tests of Load Bearing
Components/Flashing Must be Performed?**

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22 **NOT JUST BALCONIES**

23 **Purpose of Inspections
is to Prepare a Report**

Determine safety, unintended water intrusion, damage
Enough to make the 'generally safe' certification
Emergency notice to the City
Useful life and repair recommendations

24 **Timing and Reporting – We're Losing Time!**

By 2025 and every 9 years after (or if built after 2020, within 6 years and every 9 years
after that)

Report to association, retained for at least two (2) inspection cycles

If emergency, report to City/County within 15 days (enforcement)

Association must "take preventative measures" immediately (bar access, repair)

25 **Law Impacts HOA Liability Risks**

26 **Law Impacts Disclosures
and Funding**

27 **Reality Check and Practical Considerations**

28 **Reality Check and Cost Considerations**

29 **Reality Check and Cost Considerations**

30 **Rentals and HOAs... Aftermath of 2020's SB 3182**

31 **New Civil Code 4741**

Bans "unreasonable" restrictions on rentals as unenforceable

25% cap on rentals is permissible (nothing smaller)

Ban on rentals of 30 days or less is permissible

ADUs and jADUs NOT governed by rental restrictions

If the owner is living in either the residence or the ADU or jADU, It's not considered a rental

HOAs to update their "governing documents" before end of 2021

Violation – Civil penalty up to \$1,000 (and attorney fee award)

32 **Rental caps**

25% or larger are ok and unaffected

Caps lower than 25% - unenforceable.

ADUs and jADUs do not count as rentals separate from the main residence

Action to modify cap upward to 25% - does it still preserve the cap or does the HOA have to start over with the grandfathering of all current owners?

33 **Rental minimum periods**

If 31 days is OK as a minimum, what about 6 months? A year

Is the "30 days or less" ban focused upon short-term vacation rentals?

Stay tuned

34 **What is "unreasonable"?**

Something which prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing...

So, the test is: Is the effect OR purpose to prohibit leasing or to restrict leasing in an unreasonable manner.

What is "unreasonable"??? Something which really is designed to reduce or prevent leasing.

35 **Examples good, examples bad**
YOU MAKE THE CALL!!!

- ❖ Requirement that renter signs promise to obey governing documents
- ❖ Rental maximum of 20%
- ❖ One year waiting period to lease out a residence

- ❖ \$2,000 deposit paid to HOA by landlords prior to rentals
- ❖ Requirement landlord keeps lease on file with management, provides occupant information
- ❖ Move in-out fee \$1,500 for renters, \$500 for owners
- ❖

36 **Urban legend...**

You DON'T HAVE TO AMEND YOUR CC&Rs THIS YEAR!!!!

4741(f) ... a common interest development shall amend their governing documents to conform to the requirements of this section no later than December 31, 2021.

4150 "Governing documents" means the declaration and any other documents, such as bylaws, operating rules, articles of incorporation, or articles of association, which govern the operation of the common interest development or association.

37 **CC&Rs have a "bad" provision.. Now what?**

Per Civil 4741, an unreasonable CC&R rental restriction is UNENFORCEABLE

So – it's essentially now a blank.

Adopt a written rule which complies with the law or which notes that the CC&R provision is no longer being enforced

Consult your HOA legal counsel on this

38 **Are we fighting the wrong battle?**

Build a better renter neighbor

Hold landlords responsible for their tenants/guests

Could tenants contribute to committees?

Help tenants feel more responsible to their neighbors, and vice versa

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BEVEN AND BROCK CLIENTS (AND FRIENDS) SEMINAR

THANKS FOR ATTENDING –
ANY QUESTIONS?