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NEWS & VIEWS

for Homeowner Associations

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Effectively Managing Your Board Member Role!

By David Brock, PCAM

One of the great challenges of living in a homeowner's association is the inability to find owners who are willing to serve on the board. There may be a number of reasons why this is the case. One of the most challenging issues in many associations is that the same board members are required to serve year after year. Burn-out and exhaustion is most often the result for long-term board members. Sadly, for some of these board members, their home is no longer a place of refuge and enjoyment but a one of continuous challenge and interruption because of their service on the board.



Over the years, we have observed board members who serve willingly and happily for many years as well as many others who want off the board as soon as possible. For the long-term health of any association, it is best to have board members who enjoy working together as a board member for their association. But also, it is important for board members to have a balanced and healthy

"Effectively Managing Your Board Member Role!": continued on page 7.

California Legislature Levels the Playing Field for Smaller Associations with Elections Law Reform Assembly Bill 502 and Director Voting by Acclamation

By Matt D. Ober, Esq., CCAL, Richardson | Ober | DeNichilo



For the most part, the Davis-Stirling Common Interest Development Act provides a one-size-fits all approach to common interest development elections. Regardless of the number of separate interests or the size of an association's operating budget, the time, expense and preparation of the dual envelope secret written ballot process provided in Civil Code Section 5100 et. seq., was required.

Assembly Bill (AB) 502 provides some long awaited relief to the burden and expense of the Civil Code director election requirement, particularly for small communities who need it.

Smaller communities have long struggled with the burdensome election requirements of the Civil Code when it was unnecessary due to the lack of candidates for the board.

AB 502 adds Civil Code Section 5100 to the Davis-Stirling Act to allow association's board of directors to consider qualified candidates elected by acclamation, when the number of qualified candidates is equal to or less than

the number open director seats, provided specified conditions are met. Acclamation is not mandatory, and the association may opt to conduct its director election by the written secret ballot process despite the fact that the election is uncontested.

In this context, acclamation is a form of election that does not use a ballot or formal vote, where the number of candidates is less than or equal to the number of open positions to be elected.

Timeline of Procedural Prerequisites to Acclamation:

As stated, an association's ability to use acclamation is dependent upon the association meeting specified conditions. While on their face, these procedural hurdles seem cumbersome, with advance planning and a set timeline, they are manageable and perhaps a small price to pay in exchange for being relieved of conducting an unnecessary written secret ballot for an uncontested director election.

It's worth noting that notwithstanding the availability of election by acclamation, the Civil Code still requires that the

"California Legislature Levels the Playing Field...": continued on page 2.

Association conduct a “regular” director election within the last 3 years. Therefore, acclamation can be invoked two years in a row before a written secret ballot election is required.

Initial Notice of Acclamation Required 90 Days Before Nominations Due.

Under existing Civil Code Section 5115, at least 30 days before the deadline for submission of candidate nominations for the board an association shall provide general notice of the procedure and deadline for submitting a nomination. New Civil Code 5103 acclamation requirements add to the pre-balloting procedures a 90 day individual notice requirement advising members about the potential use of director election by acclamation. This initial notice

must include:

- The number of board positions that will be filled at the upcoming election.
- The deadline for submitting nominations.
- How members should submit candidate nominations
- A statement advising that by the nomination deadline if there are the same number or fewer qualified candidates as there are board positions to be filled, the board may vote to declare the qualified candidates elected by acclamation.

Reminder Notice of Acclamation Required Between 30 and 7 days Before Nominations Due.

New Civil Code 5103 pre-ballot acclamation conditions include a reminder notice by individual delivery between 30 and 7 days before the deadline for submitting candidate nominations which shall include:

- The number of board positions that will be filled at the upcoming election.
- The deadline for submitting nominations.
- The manner in which nominations can be submitted.
- The names of the qualified candidates whose names have been submitted in nomination as of the date of the reminder notice.
- A statement reminding members that if the number of candidates nominated is less than or equal to the board positions to be filled, then the board may be seated by acclamation without a ballot.

Practice note: Consider combining the initial 30 day notice required by Civil Code 5115 (general notice of the procedure and deadline for submitting a nomination) with the 30 day reminder notice of acclamation, and provide both in one document by individual delivery to the members.

Confirmation of Nomination Received and Notice of Qualification Status.

A final condition to director election by acclamation requires confirmation of receipt of the nomination to the nominated candidate and to the Member nominated (if different). New Civil

Code 5103 requires the following:

- Within 7 business days of receipt of the nomination, the association notify the nominating member in writing or by email, that the nomination was received.
- Within 7 business days of receipt, a notice to the nominee, in writing or by email either 1) that the nominee is a qualified candidate; or, 2) that the nominee is not a qualified candidate, the basis for the disqualification and the procedure through which the candidate can appeal the disqualification in accordance with the Civil Code dispute resolution procedures.

Both the above steps, of course, can be combined into one communication where the nominee and the nominator are the same person.

Seating the Candidates by Acclamation.

At the close of nominations, if the above pre-balloting notice procedures have been satisfied, and the number of candidates is less than or equal to the director seats open, then the elements for an uncontested election have been met. The existing board then proceeds with a board meeting where the agenda reflects the name of each qualified candidate proposed to be seated by acclamation. The board meeting proceeds with a board vote whether to approve the election of the slate of candidates by acclamation.

Governing Document Provisions Superseded.

The Civil Code Section 5301 acclamation procedure applies notwithstanding any contrary provision in the governing documents; meaning, that the acclamation provisions take precedence over governing document provisions that mandate board elections solely by secret written ballot or that require nominations from the floor or write in candidates. The ability to proceed by acclamation is determined as of the deadline for nominations and short circuits the written secret ballot process once the statutory acclamation requirements are met.



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GOT CONFLICT? Help is on the Way

By Janet L. Newcomb, CBL



People, pets and parking – and many other situations – can be sources of conflict in a community. What drives many of these issues? Missing or ineffective communication is the root cause of many misunderstandings. Left unresolved, these misunderstandings can become very expensive legal battles. What can be done? Let's look at what board members and homeowners can do to promote a harmonious community and prevent escalation of conflict.

Board Member Tips

- Be a servant leader! Kelly Richardson's excellent introduction to CAI's Board Leader Certificate Course encourages homeowner leaders to assume their positions with an attitude of service to their community. This is critical in everything you do.
- Understand your role – Board members set the tone and help create the community atmosphere. It's a team sport, not a hierarchy like you may find in a corporation or the military. Even though there is likely to be a president, vice president, secretary and treasurer, each board member has an equal vote when making decisions. The president needs to be a good communicator and facilitator, not giving orders but keeping board meetings moving along smoothly.
- Business and community – Associations need to be run in a businesslike manner. They are also a community of residents living together under a common set of governing documents. Building a sense of community is one of the most important things you can do and it definitely makes your job easier. When people feel a sense of belonging and trust their leaders, they are more likely to assume the best rather than the worst in any situation. They will also feel safe enough to raise

their concerns respectfully, rather than grumble among themselves without reaching any resolution.

- Understand your governing documents – Have you read them? Are they up to date? Do they still reflect the needs of your community? Be sure to get good legal advice if you need clarification of their content or are considering making revisions. Owners can be confused if these documents don't reflect current laws or rules you want to enforce. Architectural guidelines are especially fertile areas for misunderstandings.
- Education – Especially in California, it's important to stay current on the law and the latest information on best practices for associations. This can prevent poor decisions and help protect you as well as your association from liability.
- Communication and transparency – When there is little communication, people often assume the worst. Keeping everyone informed can prevent inaccurate rumors and reduce conflict. Have town hall meetings to hear what is on people's minds. Welcome new residents, publish a regular newsletter, and encourage social events.
- Respect individuals, build relationships, focus on solutions, and govern in the best interests of the community. Your personal agenda or that of a single resident must be considered in light of the entire association. Be sure to listen to concerns. Ask what people think would solve the problem. Invite residents to help out by joining committees. People rarely sue others they respect and believe are treating them fairly.

Homeowner Tips

- Be an engaged community member! Many people living in associations do not understand the importance of participating

"Got Conflict? Help Is On The Way": continued on page 4.



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*"Got Conflict? Help Is On The Way":
continued from page 3.*

in what amounts to self-governance at the most local level. Even if you don't have time to serve on the board or join a committee right now, it's important to stay informed about decisions that are being made on your behalf. As owners, these decisions likely affect your most important investment. If you didn't receive a welcome package when moving in, ask the board or your manager to share what you need to know about your community's governance.

- Understand your governing documents - There are federal and state laws and statutes, a recorded map or plan, CC&Rs, Articles of Incorporation, Bylaws, and Rules & Regulations. If your community provides insurance for your home, understand what is covered and what additional coverage you may want to purchase. Pay attention to the community's financial condition, especially whether or not reserves are being adequately funded for future repairs and replacements.
- Attend board meetings, annual meetings, town halls and social events. Here is where you can get to know your neighbors and help build a strong sense of community. Talk through issues, ask for help when needed and make an effort to find solutions together.
- Get involved (committees/board) - Help out, keep an eye on things, learn more about what's involved in running your community, and be sure to answer surveys and provide input when requested. When elections are held, you will be prepared to vote for people you believe will serve in the best interests of all members—and be sure to vote!
- Communicate concerns respectfully - Board and committee members volunteer their time and may have good reasons

for decisions they are making. Criticism invites a defensive response, rather than a focus on solutions. State your concern, seek information and perhaps suggest an alternative approach.

- Litigation can be expensive and create long-term damage. No matter who wins, everyone loses something in the outcome, especially money. There are also disrupted relationships and there can be long-term lingering hostility in the community. Before "declaring war," consider bringing in a neutral party to see if a satisfactory solution can be found.

When you live in a community association, you are all in it together. Conflict cannot always be avoided but it is not always bad, because it often brings forward important issues that need to be considered. It's all about how you deal with it. If you have built a vibrant and harmonious community, you are likely to have less overall conflict and will be able to resolve any conflict that does arise much more quickly and effectively. With a servant-leader board, strong committees and engaged homeowners, a community association can be a great place to live!

Jan Newcomb is a homeowner at Springhurst Townhomes Homeowners Association in Huntington Beach, Calif., has served in various volunteer roles in her community and with CAI for more than 20 years. You can find her at www.focusedcoach.com/.

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Unit Owner Earthquake Policy -To Buy Or Not To Buy - There Is No Question!

By Elliot Katzovitz, Earthquake Insurance Expert

Many owners of common-interest properties are understandably confused when it comes to insuring their property. This is since unlike single family homeowners, condo owners face added complications because their association also carries insurance on the same property. Often this leads unit owners to feel a false sense of security. A common misconception is the notion that if an HOA carries earthquake coverage, then individual owners will be protected against catastrophic losses if a quake were to happen. However, if you don't layer a personal earthquake policy on top of the association's policy you could be left with a perhaps fatal gap in coverage. This gap could mean the difference between having your condo rebuilt good as new or being forced to walk away from your home with nothing but memories to take along with you. For this reason, I recommend that in most cases you purchase a Unit Owner Earthquake Policy in addition to your standard HO-6 Policy to further protect your property and secure your peace of mind.

Since the largest provider of condominium-owner earthquake policies in the state of California is the (CEA) California Earthquake Authority, I will use the CEA for our illustrations below.

A CEA Condominium-Owner Policy Has Three Components:

1. LOSS ASSESSMENT COVERAGE

The first thing that happens following an earthquake in which damage occurs is that your association will special assess all the owners to cover the deductible of the master earthquake policy. In other words, you are now personally on the hook to cover your pro-rata share of the Association's deductible.

For example, let's say that your small complex consisting of five units will cost \$1,000,000 to rebuild and that your association has a 20% deductible. Therefore, the association will need to special assess the owners a total of \$200,000 to cover the deductible. So, since you have only 5 units in your complex each owner will be asked to write a check for \$40,000. Can you afford to pay such a large sum of money at the drop of a hat? Now on the

other hand, if you had purchased Loss Assessment coverage from the CEA then they would have covered your assessment of up to \$50,000. Additionally, your CEA policy would have a deductible of only \$7,500, so rather than writing a check for \$40,000, you would only have to come up with the more palatable sum of \$7,500.00

The CEA offers Loss Assessment limits of \$25,000, \$50,000 or \$75,000. The amount of coverage you need depends upon many factors including the fair market value of your unit and the percentage of deductible on the Association's Earthquake policy. It should be noted that there are areas in California where an association can obtain an Earthquake policy with a 5% deductible at very reasonable rate. In that case, a unit owner may not have as compelling a reason to purchase Loss Assessment coverage.

2. BUILDING PROPERTY COVERAGE

This coverage will help to pay for repair and replacement of certain interior elements and improvements such as built-in appliances, kitchen cabinets, bathroom fixtures and wall-to-wall carpeting etc. This basically means that you are responsible for repairing or replacing everything that's left after the association's obligation and insurable interest ends. Whether or not you need this coverage depends upon which items you alone are responsible under your homeowners association's governing documents.

There are three possible scenarios in regards to Building Coverage:

- A. Your association's CC&Rs require the association to insure the "unit interior betterments". In this case you would naturally be covered under the Master Policy and would not need to purchase your own coverage.
- B. The CC&Rs dictate that the association's obligation ends with "bare walls". Therefore, you would be delivered raw space following the rebuild and you would absolutely need to buy coverage.
- C. The CC&Rs state the association has the obligation to rebuild to "original building standard". As a result, you would get your unit

back minus the improvements that were made since the building was first built and you would most likely want to buy coverage.



The CEA sells this coverage with \$25,000 limit. Beware, \$25,000 is not enough but it is the only choice you have.

3. PERSONAL PROPERTY COVERAGE

This coverage protects many items found in the typical home such as furniture, TVs, computers, dishes and clothing etc. Basically, this includes almost everything that is not permanently affixed to the walls. The CEA allows you to buy up to \$100,000 in coverage to properly protect your personal property.

However, because the CEA policy contains exclusions and special limits, I highly suggest that you take the time to read your entire policy to become familiar with what is and what is not covered.

CLOSING THOUGHTS

It is important to remember that although your association has paid for a master earthquake policy for your building, you still need to have your own coverage to compliment and work in conjunction with your association's policy. As a specialist in condo earthquake coverage we provide each of our associations with a unit owner letter that clearly spells out recommended HO-6 and Unit-owner Earthquake coverages that will properly fit with the association's Master policy. Regretfully, we do not sell unit owner policies because we believe it would be a conflict of interest to represent individual unit owners as well as the association.

If you are not receiving the information and expert guidance you need, then you and your owners could be throwing away hundreds of dollars per year on useless coverage, or worse, you may have a critical gap in your coverage that could cost your tens of thousands of dollars when the earthquake happens.

We believe this is the level of service that each and every association deserves.

To reach Elliot Katzovitz, he can be reached by email at elliott@elliottkinsurance.com. ❖

California Legislature Adopts New Laws Impacting Community Associations Now And In 2022

By the Community Association Attorneys at SwedelsonGottlieb

Providing Legal Services to Community Associations throughout California

As happens every year, the California legislature has adopted new laws that impact community associations. This article summarizes changes to the law from the 2020-2021 legislative session, some or all of which may apply to your California community association. Some of these new laws are effective now, and most become effective on January 1, 2022. For the full article, please see the articles page on our website at www.LawForHOAs.com.

Click on "Resources" then on "Articles". A direct link is: <https://bit.ly/3Ibj3Sa>.

SB 391 - Electronic/Virtual Meetings

Throughout the pandemic, most community associations have been holding their board and member meetings via a videoconferencing platform, typically Zoom. Finally, the Legislature is formally allowing community associations to hold virtual or videoconference meetings, but only when the State declares an emergency which makes it impossible for associations to meet in person.

SB 392 - Preferred Method of Receiving Notices/Membership Opt-Out / Election Materials / Sale of Membership Lists

This new law was sponsored by the California Association of Realtors. Starting January 1, 2022, associations must start soliciting the members' preferred delivery methods (either email, mail, or both) and provide notice to members that they are not required to provide their email address to the association. This new law also clarifies election record retention, stating that associations shall maintain association election materials for one year after the election date. This bill prohibits the sale of membership information by the association or management without permission from the member.

This new law further requires that on or after January 1, 2023, an association will deliver documents requiring individual notice to members in the manner they have selected as their preferred method of delivery, or if no method is selected by traditional mail.

Additionally, if the association receives a notice that an email address is no longer valid, the association shall resend the notice by mail or to a new email address identified by the member. For documents requiring general delivery, the association can post the documents to the association's website if that location is disclosed to the members in the annual policy statement.

AB 502 and SB 432 - Uncontested Elections/Voting By Acclamation

This new law will have a significant impact on California community associations. It authorizes all associations to utilize a vote by acclamation in uncontested elections provided

that the election complies with the additional notice requirements to seek nominees. This new law also cleans up confusion in the election law by requiring assistants to the inspector of election to meet the same third-party definition, requires the candidate list to include the address of the candidate, requires the candidate to comply with any payment plans entered into, clarifies that nomination procedure notice and the general notice of an election requirements only apply to elections and recalls, and aligns the corporations code with the civil code.

AB 1101 - Financial Security and Disbursement of Funds, Insurance

This new law reduces the minimum dollar amount for bank transfers for associations with 50 or less units to \$5,000 (instead of \$10,000), changes the percentage minimum of 5% to be based on estimated income for all associations, clarifies that a managing agent shall not commingle funds, and requires an association to carry all of the following: crime insurance, employee dishonesty coverage, and fidelity bond coverage or the equivalent, with computer and fraudulent transfer endorsements, and specifically prohibits self-insurance.

AB 1584 - ADUs and Rental Restrictions

Confirms an associations' right to maintain reasonable restrictions for constructing ADUs and extends rental restriction amendment compliance date to July 1, 2022. In addition, clarifies that associations may amend rental restrictions to comply with Civil Code 4741 without a membership vote, provided that the association gives 28 days' notice before approving the governing document amendment at an open meeting of the board and after considering membership comments. This amendment may delete or restate the restrictive language to be compliant, provided that no other changes are made to the governing document.

SB 9 - Lot Splitting

SB 9 requires municipalities to approve lot splitting or adding a second residence on a lot

"California Legislature Adopts New Laws...": continued on page 7.



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ministerially, which means over the counter. We are informed that that the bill's author, Atkins, submitted a letter to the Senate Journal which states, "SB 9 would not override CID or HOA restrictions. Specifically, SB 9 is silent on the issue, meaning the new law contains no provisions that supersede HOA or CID governing documents." Further, unlike other laws that specifically state that they apply to homeowner associations, this new law makes no mention of associations or CC&Rs.

SB 60 – Short Term Rentals

Raises the maximum fines that can be adopted by the legislative body of a city or county for short-

term rental violations to \$1,500 for the first violation, \$3,000 for a second violation, and \$5,000 for each additional violation within one year of the first violation; subject to a hardship waiver.

AB 611 – Safe at Home Program

This law allows a participant in the Safe at Home confidentiality program for victims of domestic violence, stalking, human trafficking, elder or dependent adult abuse, and sexual assault to require the association to substitute the address designated by the Secretary of State as the Safe at Home participant's substitute address for association communications and to withhold or redact information that would reveal the name, community property

address, or email address of the Safe at Home participant.

AB 1033 – Employees

This new law allows employees to take a leave of absence to care for a parent-in-law of the spouse or domestic partner pursuant to Government Code 12945.2. It also requires the employee to contact the Department of Fair Employment and Housing (DFEH) dispute resolution division prior to filing civil litigation against an employer of 5-19 people or more, clarifying the procedure for obtaining a right to sue letter, including notification that mediation is required if requested by either the employee or employer.



perspective about their role in the community.

Here are some of the traits of great board members we have observed:

1. **Teamwork.** Great boards work as a team best when they realize they must be efficient and interdependent to get the tasks accomplished for the association. To do this best, the team should be operating at full capacity with the number of board members in place required in the by-laws. Too many boards operate with barely enough members to even have a quorum at a meeting. There is a need for creative thinking in enlisting other owners to serve and join the team.
2. **Sharing of the work:** There is a balanced sharing of the board member responsibilities among all of the board members. The role of the board cannot be shouldered by one or two responsible board members. It takes a team working together and sharing the load. Some board members need to step up and take on a task, and some board members need to not be shy about delegating.
3. **Unity.** The board members never allow a disagreement to become bigger than it should be. In healthy boards there is a mutual respect and support of the other board members even

when there is not agreement. A unified board realizes the owners are also their neighbors and share a common desire to make the association and property attractive and desirable. By keeping a level head and keeping your cool will not only help keep you healthy physically, but also emotionally. The best decisions are made after a healthy and active discussion of all sides of the issues and concerns.

4. **Stay in your lane!** Don't ever forget that you are a volunteer, and not an employee. Recognizing there is a need for boundaries may be necessary to keep a healthy "work-life" balance with your HOA duties. One of those boundary issues may be to realize that no decisions can be made legally outside of a board meeting, except in the case of emergencies. Board members should not directly undertake tasks or jobs that are more suitably handled by a designated professional such as the CPA, attorney, manager, or consultant. When boards utilize professional and competent vendors and appropriate professionals their job is much more manageable.

In conclusion, with perhaps a few adjustments in how the role of board member is approached, you may find that more owners would be willing to join the team. ❖



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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 types of training for board members.

Upcoming events:

Board Training: February 8, 2022

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.

Reservations can be made by calling (626) 795-3282, ext. 889, or by email at BoardTraining@bevenandbrock.com.

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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