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NEWS & VIEWS

for Homeowner Associations

July 2022

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Resolving Plumbing Issues Saves Water!

By John Bottala, Western Supreme Rooter

As California continues to experience a severe drought and with no forecast of any improvement, it is important and necessary that common-interest-developments take steps to address ways to reduce water usage. Since, for many condominium properties the water is paid by the association, the board should consider how not only to save money on irrigation of the landscaping but also how to address plumbing issues that may be wasting water.



We want to remind homeowners to always keep your eyes open for any leaks during this time. According to www.saveourwater.com, "The average household's leaks can account for **nearly 10,000 gallons of water wasted every year** and ten percent of homes have leaks that waste 90 gallons or more per day. Common types of leaks found in the home are worn toilet flappers, dripping faucets, and other leaking valves."

Every owner should be

"Resolving Plumbing Issues Saves Water!": continued on page 6.

Navigating California's Wildfire Insurance Crisis

By AJ Scott, CPCU, CIRMS | Associate Vice President of Cline Agency Insurance Brokers



If you have yet to experience the drama of seeking commercial property insurance for a wildfire-exposed community association in California, count yourself fortunate. Recent events have resulted in myriad non-renewals, as insurance companies look to extricate themselves from a risk which has claimed over \$50 billion in losses in just five years. Those Associations perceived to have moderate to severe wildfire risk are seeing their premiums (and deductibles) increase substantially - for some communities, this has meant an emergency special assessment of several thousand dollars per owner.

How did this happen?

Various factors produced these present conditions, but the most significant has been the above-average or record-breaking losses sustained during *each* of the last five years. In 2017-2021, insured losses from U.S. natural catastrophes were 223% higher than they were during the previous 5-year period, and wildfire losses in California alone have been roughly equivalent to two Northridge earthquakes. If you remember the difficulty obtaining earthquake insurance in the mid-90's, you can see how these numbers have thrown the insurance market into disarray.

But our location has never been considered a high wildfire risk in the past...?

Recent fires have thwarted

previous models and expectations, and this has changed the way insurers view and quantify wildfire risk. Formerly, the only properties considered to have high fire risk were those located in the hills, exposed to brush conditions. However, in October 2017, a deadly series of Northern California wildfires upended this concept when they decimated entire suburban neighborhoods such as Coffey Park in Santa Rosa. **Dry and windy conditions were able to carry burning embers as far as five miles, dramatically expanding the radius of fire risk, and shifting the terminology in the insurance industry from "brush risk" to "wildfire risk."**

Numerous additional wildfires since 2017 have corroborated this alarming new reality, and these events have resulted in updates to the risk-modeling software that insurance companies use to determine rates and eligibility. Now, "wildfire risk scores" can change from one year to the next, as new data and revised predictive models are input into this software.

So what can communities do if they are non-renewed for wildfire risk?

Associations facing a non-renewal from their current insurer should begin with a survey of the preferred (Admitted) marketplace. We suggest approaching *one* State Farm agent, *one* Farmers agent, and *one* independent broker specializing in HOA insurance.

"Navigating California's Wildfire Insurance Crisis": continued on page 2.

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"Navigating California's Wildfire Insurance Crisis": continued from page 1.

Because different carriers may use different modeling software and/or have different eligibility thresholds, we have seen many non-renewed associations find coverage with another standard market, though there is usually an increase in premium (commonly ranging from 15-50%).

For communities deemed to have severe wildfire risk, I'm afraid the prospects are bleaker, with premiums and deductibles increasing by a staggering amount (e.g., four to ten times the Association's expiring policy). Generally, a wildfire risk score over 80 is unlikely to receive any quotes from the standard carriers and must turn to the excess and surplus lines ("E&S" or Non-Admitted) market for coverage. Larger associations will almost certainly require a layered property insurance program, comprised of multiple policies in order to achieve full limits.

When this happens, we strongly suggest partnering with a single retail broker to shop the E&S markets, rather than enlisting multiple agents and brokers for this effort. This may seem counterintuitive, but using multiple brokers is actually counterproductive: it results in a divided landscape and undermines each broker's authority in the marketplace. A single broker working with a major wholesaler will be able to canvas the entire marketplace, so we would encourage boards to interview brokers and select one based on their community association expertise and their track record for securing coverage for wildfire-exposed communities of comparable size.

For very small associations (i.e. with total building values of \$5.6

million or less), the California FAIR Plan (CFP) might be an option, but the program's limitations should be well understood by the Board: the CFP covers only a few named perils (fire, lightning, internal explosion, and smoke ONLY), and a separate policy must be purchased for each building. To supplement the CFP's protection, a companion policy is necessary to insure other perils (beyond those named above). Additionally, depending on the amount of non-building property the Association is responsible to insure, another policy might



be required to insure property such as pools, sports courts, and other recreational amenities and community infrastructure which the CFP is not designed to cover. The CFP is generally not an option for communities exceeding \$5.6 million in building values.

Some associations faced with a worst-case scenario renewal have mobilized to amend their CC&Rs, either to reduce the Association's coverage obligations (for example, from "All In" to "Bare Walls" coverage) or to remove the obligation to insure the residential buildings altogether, shifting this responsibility to the individual homeowners. This latter option is obviously limited to Townhouse-style or detached construction rather than stacked condo units.

How on earth do we break this news to the membership?

We would urge you to take every opportunity to educate your members in these situations, relying on your professionals (both insurance and legal) and inviting them to attend meetings and owners' forums where they can explain the circumstances and answer questions firsthand. Clear and consistent communication can

"Navigating California's Wildfire Insurance Crisis": continued on page 3.

Architectural Rules are Required!

By Brian Moreno, Esq



One of the advantages of living in a common interest development is the uniformity and attractiveness with regard to the appearances of residences and other features. This is especially true if the community has well-drafted architectural rules/guidelines that are regularly enforced. The attractiveness of the homes also increases property values in most cases. It is equally important to have architectural rules that comply with applicable law so that the risks of encountering disputes can be reduced. Associations can benefit from well-drafted rules and are both reasonable and appropriate for the community.

It is true that owners living in a common interest development have the right to modify and improve their properties, but the right is subject to the governing documents of the community and applicable law. Most CC&Rs documents provide for the board of directors to appoint an architectural committee and to adopt architectural rules that establish an association's policies modifications and improvements to an owner's property. Architectural rules can and sometimes do include

the architectural committee's ability to deny or approve an architectural application based on subjective, aesthetic considerations. California courts have ruled that maintaining a consistent and harmonious neighborhood character - one that is architecturally and artistically pleasing - confers a benefit on the homeowners by maintaining the value of their properties. Preservation of attractiveness should be one of the goals of an architectural committee.

Architectural Topics

In California, associations are required to have architectural rules of some kind per the Davis-Stirling Act. This would include a reasonable procedure for the decision-making process and annual distribution of the rules once adopted. With this in mind, association boards should work with management and/or legal counsel to develop architectural rules that are not only legal but reasonable, thorough, and appropriately detailed for the particular community. Topics included in architectural rules can include the following:

1. Hard-surface flooring. For condominium communities, associations can prohibit hard-surface flooring or impose

"Architectural Rules are Required!" : continued on page 4.

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go a long way to defuse tension and assure the owners they are being treated with respect and consideration.

Inviting owners to contact both the California Department of Insurance and their state legislators with their personal story is another valuable means of (a) directing their energy into productive action, and (b) motivating our leaders to work diligently and urgently towards better solutions. The California Legislative Action Committee of the Community Associations Institute (CAI-CLAC) has recently coordinated several calls to action on this matter, so

impacted homeowners might consider signing up for updates at www.caiclac.com, to add their voices to these ongoing efforts.

If history is any indication, we can rest assured that our state and the insurance industry *will* succeed in innovating and adapting to provide more sustainable solutions for California's wildfire-exposed communities; it's just a matter of time. (How much time, unfortunately, remains to be determined!) In the interim, understanding the forces behind this crisis is the first step to navigating them.

AJ Scott can be reached at (800) 966-9566 x28; or by email aj@clineagency.com. ❖



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*"Architectural Rules are Required!":
continued from page 3.*

restrictions that regulate the noise transmission, including the installation of certain underlayment and soundproofing components.

2. Landscaping. Associations can require certain types of landscape, certain types of trees, and that the proposed landscape must be subjectively attractive to the architectural committee.
3. Paint Color. Associations can require certain paint colors for different components that are visible to the community. Associations may even require certain color codes that are acceptable.
4. Building Materials. Associations may require certain fence or wall materials; roofing materials; garage door specifications; windows, window frames, and window sizes; etc.
5. Applications. Associations may require that a certain architectural application (with a certain detail and answers to a list of questions) be submitted; that remodeling agreements with indemnity, permits, insurance, licenses, etc. provisions addressed, and contractor rules signed by the owner and the owner's contractor addressing work holidays, work hours, conduct of workers, quality and cleanliness of work, clean-up requirements, professionalism, worker parking, and conduct standards.

Legal Protection

It is critical that the community association and its members are protected from start to finish with respect to an architectural modification. This would also include protections for architectural committee members and community managers involved with the approval process and shielding them from liability.

Insufficient Architectural Rules Can Be Problematic

Architectural rules that are ambiguous or that do not exist can create problems and legal challenges from owners. For example, an owner may request approval for a backyard deck that would have

the potential of obstructing one neighbor's view and become a nuisance if the deck is utilized for parties and gatherings that generate noise. If the association does not have architectural rules or the rules are not well-defined, a legal challenge could be pursued against the association even though the proposed deck would create significant issues.

Likewise, if the architectural rules do not spell-out the types of trees permitted and not permitted, an owner could install a tree that have an invasive root system and/or grows to be taller than other trees in the community. The association would have difficulty in preventing issues like this with insufficient architectural rules.

Be Proactive

Association boards should also be proactive in anticipating potential issues that may arise. Components like satellite dishes, EV charging stations, solar panels, HVAC units, significant remodeling, house additions, room conversions, washers/dryers, common area encroachments and modifications, and the like should all be considered and (if appropriate) addressed in the architectural rules (or addressed in a separate policy).

Member Involvement

Once the board has developed an acceptable draft of the architectural rules, the board should consider holding open, townhall-style meetings so that the membership can have input into the process. The Davis-Stirling Act already requires a 28-day comment period before the proposed rules are adopted, but the board should go a step further and involve the membership in the process. The board should also consider sending surveys to the membership and/or inviting discussion and input that the board can consider before formal adoption of the rules. While the association will never be able to please everyone, the board will have a greater chance of member acceptance and compliance of the rules to the extent the members were, at least, involved in the adoption of the rules.

Brian D. Moreno, Esq., CCAL can be reached at bdm@moreno.law, or at (888) 578-9673. ❖

HOA LEADERSHIP: Managing Board Roles

By David Brock, PCAM



Many HOA boards struggle to find people to serve as it's often viewed as an unfavorable job. However, for the business of the association to operate

in the best way, there must be a *full and fully functioning board*. HOA leadership functions best, when the board operates as a team, and **each board member is responsible for a specific area of responsibility**. When the positions on the board are clearly defined, each board member is the point person on their given area of responsibility. When this is done there is no confusion when communicating to third parties, such as the management company or other association vendors.

The positions on the board are President, Vice-President, Treasurer, Secretary, and Member-at-Large. These are typical board positions for a five-member board however there are some by-laws that provide for a three-member board, in which case some roles will need to combine. Here are some suggested tasks that each position should handle, as well as the qualities of board members that are best suited for each.

The President

- Facilitates and empowers each board member in finding their specific role on the board.
- Allows the other board members to fulfill their role.
- Sets time/place for meetings.
- Chairs the board meetings and membership meetings.
- Prepares the board meeting agenda with the Secretary.
- Has the same voting power as any other board member.

The President is often the spokesperson for the board to third parties or the membership. The President must always speak for the board even when he/she doesn't agree with the board majority.

The qualities that would be helpful for the President are

management and leadership skills, able to delegate, stays organized, and communicates well.

The Vice-President

Assumes the duties of the President as needed when the President is unavailable. Available for special tasks as needed such as architectural issues, internal dispute resolution, community building efforts, landscaping or special projects. The Vice-President could also serve as the *maintenance liaison* to the management company. There may be unexpected issues that come up between meetings and this may involve contacting other board members between meetings on a particular decision that cannot wait until a meeting can occur.

The qualities that would be helpful for the Vice-President: same as the President, and a willingness to learn and grow into the role of President.

The Secretary

- Records the minutes of all meetings, prepares them for approval by the Board, and arranges for distribution to the owners and the Association Manager. Some associations will bring in an outside person to take minutes if no is willing to do the task of taking minutes.
- Prepares the Notice of meetings and the Agenda and posts it on the property, so that owners are aware of the meeting and have an opportunity to attend.
- Maintains a record of all previous minutes in a way that can be easily accessed.
- Oversees or drafts letters or notices to the Membership or an owner.
- Qualities that would be helpful for the Secretary: comfortable with Microsoft Word. Shorthand is not required; however written communication skills are important.

The Treasurer

- Primarily responsible for the financial affairs of the association.
- Receives and reviews weekly payables, signs checks and mails to vendors.
- Receive the bank reconciliation and copy of reserve statements as they are processed.
- Responsible to safely invest the reserve funds according to the direction of the board, and transfer to the operating account funds as they are needed for reserve projects.
- Reviews monthly financial reports and reports to the board about them.
- Serves as the liaison between the board and the management company on financial issues.
- Coordinates transfers into and out of the reserve account.
- Familiarity with the reserve study.
- Reviews the status of owner accounts and recommends action in cases of delinquency.
- Works with the CPA and management company on the annual tax filings and review, if required.

Qualities that would be helpful for the Treasurer: able to read and understand basic financial concepts. It is possible to be overqualified for this role for some people who have been involved professionally in high level accounting positions. Association finances are basic and involve a great deal of common sense. A person who can balance his or her own checkbook is likely able to learn what is necessary.

The Member-at-Large

The specific tasks should be assigned by the President and may consist of tasks that are like the Vice-President.

In conclusion, HOA board service is much more manageable when the board is properly structured, board members understand and operate well in their roles and when they work together as a team. ❖



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Correction to Article published in April 2022

In the April 2022 we featured an article under the title of "EXPERT ADVICE REGARDING BALCONY INSPECTIONS"

In the article, this statement was made by Randy Beery, "there are some balconies that do not need to be inspected, such as recessed decks and "juliet decks".

Mr. Beery would like to make a correction to this statement: "I do want to point out a misquote regarding Juliet decks. In the article it says that the Juliet and recessed decks do not need to be inspected. This is not the case. Juliet and recessed decks do need to be inspected but the sampling size will most likely be smaller. In either case the handrails of ALL elevated decks need to be included in the sampling, including the handrails of decks that are supported on all four sides.

Mr. Beery also wanted to add, "an HOA should reject any SB326 report that includes an "out of code" or anything that references not meeting current code. SB326 is not a code compliance inspection. This type of derogatory remark

on your SB326 could affect the property values of the association for 18 years".

As was indicated in the April 2022 newsletter, you can find a resource list of providers who are offering their services for balcony inspections. The link for the resource list can be found here:

<https://www.bevenandbrock.com/board-member/>, and click on #20. ❖

EXPERT ADVICE REGARDING BALCONY INSPECTIONS

In this issue, we are featuring advice from two companies who are addressing the "Balcony" inspection requirements (SB326). In addition, we are providing a resource list of 10 companies who are providing this service as well. To access this resource, go to <https://www.bevenandbrock.com/board-member/> and click on #20.

Advice from Randy Beery at the Bergeman Group, a Construction Management company and active in balcony inspections.

What is the current status in the Balcony inspection market?
We have had many associations requesting proposals. There is a lot of "shopping" of bids right now. Whether it is from sticker shock or from associations hoping prices will go down, a large number have not been committing to performing the inspection.

HOAs are getting much conflicting information on what needs to be inspected, how many elements the building needs to be inspected. Even lawyers cannot agree on many of these issues.
What do boards need to know that isn't obvious?
The longer an association waits to decide to start the process, the longer it will take to get the inspection done. Right now the Bergeman Group is 6-8 weeks out to perform the initial inspections required to provide the data to the engineer who will do the calculations of the "statistically significant" sample size. This information is required to accurately write a construction proposal to perform the inspections and order permits. With the rapidly changing prices in construction, we will not be able to hold our pricing past 120 days.

The ambiguity in the wording of SB326 makes it unclear to HOAs how many decks need to be inspected.
A "statistically significant sample" means a sufficient number of units inspected to provide 95 percent confidence that the results from the sample are reflective of the whole, with a margin of error of no greater than plus or minus 5 percent.

Most of our competitors quotes inspections of 100% of the decks in lieu of calculating a "statistically significant" sample. With smaller associations it may well include 100% of the decks. But with larger associations, mathematically calculating the sampling size will save an HOA tens of thousands of dollars.
What if an association knows that they have deck or railing issues already?
If an association knows they need deck repairs or handrails replaced, we recommend talking to a construction manager and incorporating the SB326 inspection into the repair project instead of inspections required to seek a claim against the builder. If an HOA falls in to the ten year statute of limitations, let the inspector know you want to be notified immediately if damage is discovered DURING an SB326 inspection. And then take a lot of photos and consult a Construction Defect (CD) attorney.

Only an elevated element that poses an immediate threat to the safety of occupants need to be reported to the local enforcement agency within 15 days. Occupant access to a reported element is prohibited until inspected and approved by the local building department.
There are some balconies that do need to be inspected such as recessed decks and "juliet decks", and a "juliet deck" is a very small and narrow deck (see photo) or more information: (619) 659-9610, Ext. 310, Cell: (619) 529-6216 or randy@bergemangroup.com

Advice from Carl Brown at AWS Consultants:
Our company has sent out over 100 proposals based on requests from HOAs. We have now begun to see them come back approved.
We are finding that there is still much confusion out there such as:
1. Which elements qualify for inspection? Wood framing for elevated walkways, stairwells and decks that are over 6 ft above ground, as well as railings of all kinds.
2. Which elements are qualified to perform inspections and sign off for compliance?
3. Can a Civil Engineer signing "Forensic" Architect only?
4. Can a General Contractor provide SB326 inspections with a Civil Engineer signing off? No.
5. Are there any balconies that are excluded? Yes, if fully supported on four sides by building walls that go down to the foundation.

Expert Advice Regarding Balcony Inspections - continued on page 6.

"Resolving Plumbing Issues Saves Water!": continued from page 1.

educated and mindful of the situation at hand. For example, a running toilet that is constantly leaking could waste 3-4 gallons per minute. This amounts to about 240 gallons per hour which adds up to 5,760 gallons per day. It is time to call a plumber to get it fixed.

When you park your car in the underground parking garage you may see a pipe spraying from the ceiling. This is called a pinhole leak and it could waste up to 170 gallons of water a day. If you observe this, it should be reported to management or the board immediately.

Since 2016, all toilets sold in California must meet low-flow efficiency standards set by the California Energy Commission. Under the rules, which are the

toughest in the country, toilets cannot use more than 1.28 gallons per flush. Consider changing or updating your toilet if it is non-compliant.

The EPA states "showing is one of the leading ways we use water in the home, accounting for nearly 17% of residential indoor water use for the average family. This adds up to nearly 40 gallons per day which is nearly 1.2 trillion gallons of water used in the United States annually just for showering. This is enough to supply the water needs of New York and New Jersey for a year! By retrofitting your shower with a WaterSense labeled shower head, you can save a considerable amount of water. We certainly don't advocate discontinuing the use of

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*"Resolving Plumbing Issues Saves Water!":
continued from page 6.*

showers, however.

Often a dripping faucet is not addressed by an owner as they don't want to call out a plumber and pay for a service call. There is a requirement in some cities for low flow toilets and shower heads to be installed, but many cities do not mandate this. Even so, unless



a unit is sold the requirements will never be met, which is concerning for all generations to come.

HOA board members may feel that there must be some action they should take to address water leaks within units. We reached out to attorney Kelly Richardson, Founding Partner of Richardson Ober DeNichilo in Pasadena to understand what boards can do. Kelly Richardson stated that "it would be rare for governing documents to provide for the association to inspect unit interiors which means that boards don't have the right to inspect units for possible

leaks". He states further that "water conservation is important, but do the CC&Rs contain any restrictions on water wasting?"

Finally, Kelly Richardson suggested that associations where the water is paid by the association may want to consider sub-metering water to individual units. He states that "submeters may require a CC&R amendment to permit the HOA to charge owners for measured water usage".

A practical solution to encourage owner participation in helping to lower water bills would be to arrange for a plumber to be onsite on a given day and invite owners to have a free inspection of their sinks, toilets and shower heads. This would be voluntary and free to residents and it would make sense for the association to pick up this cost as it would save money in the future. Owners could be given an estimate from the plumber to have any issues addressed, either that day, or a future date. The goal is to encourage owners to participate in the easiest way possible. Owners would need to indicate their interest to participate in advance so that the plumber can anticipate the size of their team to be onsite.

We want to be mindful of the situation in California as we want to make sure we all continue to leave this great state in a drought-free environment in years to come.

Here are some additional resources for your review:

<https://saveourwater.com>

<https://www.epa.gov/watersense>

<https://saveourwater.com/en/How-to-Save-Water/Around-the-House>

<https://www.youtube.com/watch?v=U8pOEMqBXCA>

John Bottala is the CEO of Western Supreme Rooter and Plumbing in Arcadia, and can be reached at westernrooterinc@gmail.com or 626.448.6455. ❖

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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. We do not remove names unless requested.

If you would like to be removed from the newsletter or add additional recipients, please provide the name, and email or mailing address to: HOANewsletter@bevenandbrock.com.

You can always access back issues from 2011 at <https://www.bevenandbrock.com/newsletter-useful-links/>. In addition, you can access a topical library of articles at <https://www.bevenandbrock.com/topical-article-library/>. There is a simple registration form to complete.



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.

BOARD TRAINING:

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.

There is no current date set however to be notified of the next seminar date, you may call (626) 795-3282, ext. 889, or let us know 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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