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NEWS & VIEWS

for Homeowner Associations

January 2023

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Who Will Serve On The Board?

By David Brock, PCAM



Board member burnout and homeowner apathy are two of the most common complaints we hear from board members about

their association. Some feel that the only way off the board is to sell and move out. While ongoing board continuity is good, it is a fact that board members will burnout. Many are tired and “feel all alone” without other owners taking any interest in serving the association.

Some board members see their role as a “life-time commitment” and serve the association faithfully for many years, until the time comes, inevitably, when they just say, “I’m done.”

Who will serve on the board? Will anyone step up?

The perception of the board role may be one of an unpaid on-site manager who is on duty 24-7. This perception may not be invalid if that is how the current board handles the position. It’s understandable why it may be a challenge to have board members agree

“Who Will Serve On The Board?”: continued on page 5.

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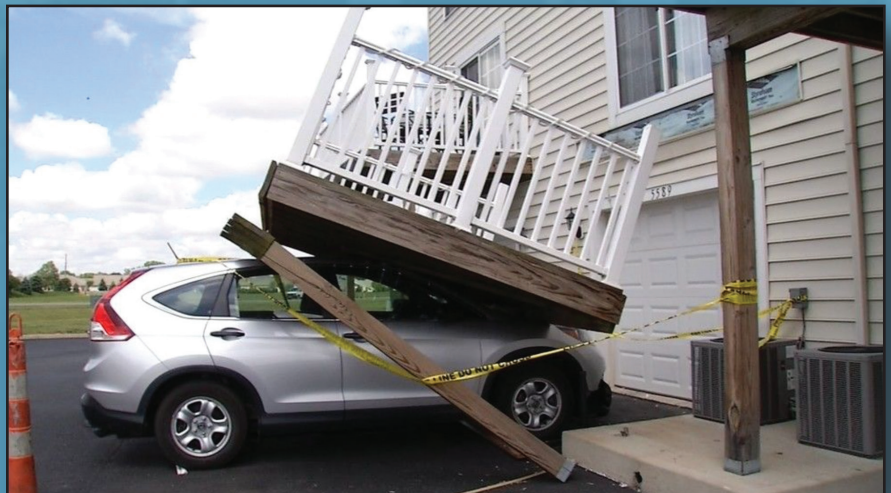
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HOA Homefront – New laws Coming for HOAs in 2023

By Kelly G. Richardson, Esq. CCAL



While 2021 was a banner year for positive HOA legislation, 2022 turned out to be less helpful in Sacramento for California HOAs.

While many bills were introduced this year, only one made it to the Governor's desk - Assembly Bill 1410. Authored by Assembly Member Freddie Rodriguez from Chino, AB 1410 was signed into law by Governor Newsom on September 30, 2022, and will become effective at the beginning of 2023.

In my many years following HOA legislation, I often see bills that are sparked by a constituent reporting an incident which sounds to a legislator to be a problem deserving action and a new law. However, it is important for legislators to investigate if the incident represents a widespread problem among HOAs, to ascertain whether legislative involvement is needed. Unfortunately, AB 1410 appears to address issues arising from isolated incidents, as in 33 years of advising HOAs I have never seen any of the issues in this bill actually occurring.

AB1410 makes three changes in California law regarding social media usage, taking on boarders, and failure to comply with HOA requirements during emergencies.

Civil Code Section 4515, enacted in 2018, is essentially a free speech statute for HOAs. It protects the right to meet and canvass or petition members and to circulate information to members and residents. AB1410 adds a subpart (6) to the list of protected activities in Section 4515(b), which will not allow HOA governing documents (CC&Rs, bylaws, or rules) to ban the use of social media or internet resources to discuss the HOA, legislation, public elections, or other issues of concern. The new subpart clarifies that HOAs are not required to provide social media or online resources to members or to allow members to post on the HOA's website. A new Section 4515(e)

is also added, which prohibits retaliation against members or residents for exercising rights under the statute.

Since CC&Rs and rules regulate how homeowners use their homes or common areas, it is hard to imagine how governing documents could regulate social media commentary. I have not seen an association sanction somebody for criticizing the HOA in social media - although I have seen some horrible allegations in social media, where apparently anyone can say anything without accountability. I do not think this new law will have much impact upon HOAs or their members.

Many HOAs have various requirements and limitations regarding rentals of HOA residences. A new Civil Code Section 4739 says that the HOA may not prohibit owners who live in their residences from renting a room to a tenant so long as the rental is over 30 days. The impact of this new law is that members living in their HOA home can take on boarders (but not short-term).

The third new law from AB1410 is a new Civil Code Section 5875, which will not allow HOAs to pursue enforcement actions (except for enforcing payment of assessments) during a declared emergency if the nature of the emergency prevents the homeowner from preventing or remedying the violation. I have not encountered this situation and find it hard to imagine it occurring.

Now, Sacramento, how about next year doing something truly important for HOAs and change the law to allow electronic voting (like every other nonprofit corporation in California)???

Kelly G. Richardson, Esq. is a Fellow of the College of Community Association Lawyers and Partner of Richardson Ober LLP, a California law firm known for community association expertise. Submit column questions to Kelly@roattorneys.com. Past columns at www.HOAHomefront.com. All rights reserved®. ❖

SB326 - The Balcony Inspection Requirement Q & A

By David C. Swedelson, Esq., Senior Partner at SwedelsonGottlieb

We asked three companies who are actively involved in the SB326 – Balcony Inspection field to respond to a few questions. Those experts are:

- Dilip Khatri, PhD, SE, of Khatri International, Inc. has been a structural engineer for 40 years; dkhatri@aol.com
- Carl Brown with AWS Consultants, Inc.: cbrown@awsconsultants.com
- Robert Grosse, of Design Development Construction, Inc.; robert@d2construction.net

We would love to hear from you if your Association has already engaged in this process and you can share some lessons learned. Please write us at HOANewsletter@bevenandbrock.com. We will share them in a future newsletter.

1. What are the most frequently asked questions you receive from Associations about the inspection process and what are your responses?

Dilip Khatri: Cost? To which my responses are our inspection fees are within the range of \$400-\$600/balcony unit and we include stairways, walkways, and railings with the balcony units.

Timeline? Timeline is about 4-6 balcony unit inspections/day per engineer assigned.

Scope of repair? Scope of repair depends on our findings and will range from doing no repair to reconstruction of the balcony.

AWS: What will the entire project, including inspection and repairs cost? This is not possible to answer until at least Stage 1 is completed.

DDC: The most frequent question asked by HOA's is "Does your company do all the work to complete SB 326 Inspection?"

The answer is YES. DDC is a complete TURNKEY service ranging from the "opening" of the structure for inspection via boreholes or vent access, to the engineering inspection, to vent/borehole fill with paint touch up to match existing conditions and clean up. A final inspection report

for use by the HOA with advice for maintenance and if any repairs are needed is completed to comply with the SB 326 regulation.

Secondly, HOA's will often ask "It's expensive...can you do fewer openings for inspection?" The answer is that the number of openings for inspection is based on a statistical model of decks, exterior walkways, and exterior staircases. We cannot reduce the number of openings/inspection points due to the regulation's requirement for *Confidence Factor*.

2. Describe your process to proceed once an association has decided to work with your firm?

Dilip Khatri: Our inspection process for Phase 1 is to perform a physical inspection of each balcony unit and record measurements, photographs, and construct a data file.

AWS: AWS requires a signed contract and retainer; on arrival at our office a Certificate of Insurance is automatically generated. Then the contract is passed to our operations manager for execution. One of our staff will make contact to discuss dates and access. Notices are posted onsite prior to the inspection.

DDC: We visit the location, study the deck configuration and structure, produce a Confidence Factor model, and calculate the inspection count and inspection type method to develop the proposal. If the HOA chooses DDC and executes the proposal(s) we then make a second visit to the site to locate the inspection points based on the provided count in the proposal. The required materials may take a few weeks to arrive and then a date is set to begin testing, inspection, and clean up. An additional two (2) weeks is needed to complete the report after the inspection.

3. Would you recommend working with an engineer or an architect? Why?

Dilip Khatri: Choosing the right team is imperative and my

"SB326 - The Balcony Inspection Requirement...": continued on page 4.



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“SB326 - The Balcony Inspection Requirement...”: continued from page 3.

recommendation is to go with the legal requirement of CCC 5551 which clearly states a Structural Engineer OR Licensed Architect. Do NOT go with a general contractor because there is clearly a conflict of interest here. Certain “construction contractor teams” are pursuing this work with a structural engineer in the background which is not what CCC 5551 says. There is the potential for possible conflict of interest because contractors are not in business for doing inspections and design solutions, they are in business for construction. As far as choosing between a structural engineer v. architect, my advice is to stay with a structural engineer because this is our business: life safety evaluation of buildings. This is what we DO. Architects are designers of new buildings and not trained/educated sufficiently in this space, so they will have to hire a structural engineer to perform this work. Why have another middleman?

AWS: AB326 specifically requires a structural engineer or architect for inspections and signed reports. However, we have not found an architect with sufficient forensic experience to inspect existing structures as most work on new buildings. We believe structural

engineers are most qualified for this work and have partnered with several for best efficiency.

DDC: We recommend working with a Structural Engineer and my background is architecture. The education and license for a PE is directly related to “looking at the risk to the building structure based on possible water intrusion”. A structural engineer can respond to structure issues on the spot. Our company has an engineer on our team.

4. What problems have you experience in working with associations?

Dilip Khatri: My firm’s challenges with Association work are: (a) timeliness to request inspections; (b) availability of units for access. We need Associations to work with us to address this as a priority item. Timeliness is my first concern.

AWS: Many associations are chronically underfunded. This creates a major challenge when boards have to now make a decision to fund balcony inspections and potentially repairs.

DDC: So far, boards have been very slow to respond to proposals. Board education is very important to reduce the confusion and fear of the cost and the process. Education is also important to explain the law as it is very confusing. ❖

Is Your Association Manager Certified?

By David Brock, PCAM

Certification of Managers: What is it and is it important?

Common-Interest-Developments (CID) have a wide range of choices when it comes to deciding for hiring a management company. Management companies range from national corporations to sole proprietors working out of a home office.

The differences between management companies are significant and the comparison of companies can be daunting. However, the state of California has provided one excellent means of comparing managers that every board should utilize in seeking to hire or replace a manager and management company.

In 2003, the legislature passed

legislation, which specified how someone could be called a “certified common interest development manager”. Strangely, while this code section defined what is required of someone who is called a certified common interest development manager, the law does not require those who function in this capacity to actually be certified.

Since the inception of the law, and annually thereafter, a person who either provides or contemplates, providing the services of a common interest development manager to



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to serve. If the position is one of hands-on management of the daily needs of the building and residents, then they will never agree to serve.

But does it have to be this way?

Board members who have been serving for years may want to consider how to best demonstrate that the board member role can be managed in ways that don't give the impression that they are on duty 24-7. If a board can serve and operate in a way that values a healthy “work-life” balance, then it may be possible that others will want to join the board.

What does this mean and how can it be effectively applied in your community?

Communication

today is typically done by email. Email, by its nature, demands an instantaneous response. Also, some communication by email does not reflect a healthy dialogue between people. Emails may be written in anger or late at night, when normal courtesies of face-to-face conversation don't occur. While we are a “email heavy culture”, it is important to realize that the law does not require board members to communicate and respond in this manner. The law provides one method for owners to communicate with their HOA board. That method is called “Open Forum” and it is a portion of a board meeting. Many of us have allowed ourselves to succumb to the demands of instant communication that often comes at inconvenient times and interrupts our lives. This is like an owner knocking on your door during dinner with their issue that they find important in that moment.

minutes is far better than being on call 24-7 the rest of the month.

As a board member, instruct your manager to contact you only on emergencies or time-sensitive issues that cannot wait until the next regularly scheduled board meeting. This will help allow you, as a volunteer, to enjoy your home and interests without having to involve yourself in *association business* more frequently than necessary.

Another aspect of avoiding board burnout is to share the responsibilities on the board equally. Board service is a team effort, and

As a board member, it would be wise to consider adopting some boundaries. Obviously, if there is an emergency occurring, such as a plumbing leak or stoppage, or a roof leak, these types of issues should be reported to the management company or a board member immediately. Hopefully, these are rare.

Most emails from owners are issues that should be brought to the board at a meeting of the board. This underscores the fact that there should be *regular board meetings in person*. Proper board meetings cannot occur by email. Some boards don't meet at all and decide everything by email. *Unfortunately, the law doesn't allow for this.* Having a meeting once a month for 60-90

too many board members act as though they are the only active member on the board. It might take some effort to engage with the less active board member, but it is important to share the load, together. Also, engaging other board members to help carry the load is important for homeowners to see. The purpose of a board is to work as a team. If you are the only board member, or the only one who acts for the board, burnout is inevitable.

Delegation is an important concept, whether it is delegation to another board member, delegating to one of your vendors, or it is involving your Association Manager, attorney, or a plumber with an issue.

Board members are not expected to handle everything that comes their way without outside help. Don't shy away from engaging vendors, other board members to help you along the way.

In summary, serving on an HOA board can be all-consuming, if you allow it to be. However, it is also your home where you spend most of your time. Having that time taken from

you translates to less enjoyment and quality of life. As you begin a new year, we encourage you to find new ways to lead your Association without it consuming your life. ❖



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"Is Your Association Manager Certified?": continued from page 4.

an association shall disclose to the board of directors of the association the following information:

(a) Whether or not the common interest development manager has met the requirements of Section 11502 so he or she may be called a *certified common interest development manager*.

(b) The name, address, and telephone number of the professional association that certified the common interest development manager, the date the manager was certified, and the status of the certification, and (c) The location of his or her primary office.

The law requires managers to pass an examination that would test knowledge, skills, and aptitude as outlined in Section 11502. The law further requires managers to complete 30 hours of course work initially. The manager must re-certify every three years, completing another 30 hours of coursework in a number of areas broadly related to common-interest-development management, including a course in ethics. In addition, *letters of reference* are required and at least six months of experience are required prior to becoming a *certified manager*.

While there is plenty of great criteria for boards to review in making the best decision for the next management company, the issue of certification of management staff is an easy one. As a volunteer board member your inclination should be to work as efficiently as possible. Making the best long-term decisions about vendors is how board members reduce their labor as volunteers, (remember the "hourly rate" you are earning as a board member). It is important that you make good decisions in hiring vendors.

For most people their home represents one of their most valuable assets, and for that reason it would make sense to work with a manager who is certified. Working with a certified manager affords the best protection for

associations as knowledgeable and certified managers help steer their associations through the maze of regulatory compliance thereby reducing potential liability and making it easier for volunteer directors to meet their fiduciary duties.

A CID manager who makes the investment of time and money to become certified is clearly committed to this industry and has plans to remain in this industry for an extended period. A *certified* association manager separates those who are committed to the industry from those who simply applied for a job and were hired to work at a management company.

The position of association manager requires general knowledge as well as a variety of skills. One of the great challenges for HOA managers is burnout. Managers who are in this industry for the long term are the kind of managers that you want to have working for you, and not someone who has applied for a position because of an economic downturn in a related field.

In summary, here is why it is advantageous to work with a certified manager:

1) **Ethics** - A HOA board should be concerned that their management company/manager has integrity and operates honestly. Both the Community Associations Institute (CAI) and the California Association of Community Managers (CACM) have Codes of Ethics and Standards of Practice. Only Certified managers are bound by these codes. Board members who work with a manager who is not certified have no recourse to deal with an issue, other than legal action.

2) **Conflicts of Interest:** - Both managers (and board members) can have conflicts of interest. A 2018 law requires management companies to disclose relationships with affiliated companies that may provide services to your association, where the manager, or management company have

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an ownership interest. As a board member, you should know when the manager benefits in other ways.

3) **Knowledgeable** - The CID (aka HOA) industry is continually impacted by new laws every year. As a volunteer board member, you should not have to keep up on law changes. You should expect that your manager is doing this for you, and your manager or Management Company can provide you with the updates as they occur.

In closing, consider the value of your investment and the value of your time. When looking to hire a manager you must make the strongest decision you can make, and that should be for a Certified *Common Interest Development manager*.

MANAGER CERTIFICATION: The Beven & Brock Annual Disclosure

As a matter of disclosure for 2023, **all** of the Beven & Brock association managers and the principals of the firm are Certified common interest development managers. This means that each of the following have met the requirements of the Business and Professions code, section 11502.

The following managers are certifications are current and are certified with the CCAM designation by CACM, which is located at 23461 So. Pointe Dr., Suite 200, Laguna Hills, CA 92653. The phone number is (949) 916-2226.

- C. Finley Beven, since 1994, Emeritus
- Vianna Boettcher, since 2006
- Roman Esparza, since 2009
- Juanita Flores, since 2004
- Laura Hoot, since 2003
- Lori Lacher, since 2003, secondary designation: PM
- Sue Threadgill, since 2003.

The following managers are certified with the Community Associations Institute, located at 6402 Arlington Blvd., Suite 500, Falls Church, VA 22042; Phone: (703) 970-9220:

- David Brock, PCAM designation, since 1990
- Paul Cannings, CMCA since 2008 and CCAM since 2003. **
- Marlene Gamboa, CMCA since 2017
- Kim Bloomer, CMCA since 2021
- Fang Zhu, CMCA since 2017
- Elizabeth Threadgill, since 2021
- Judy Avila, since 2022
- Maria Frausto, since 2022

** Certified in both the national and the state organizations.

The law also requires that the location of the manager's primary office be disclosed which is 99 S. Lake, Suite 100, Pasadena, CA. 91101.

If your Association is managed

by another firm and you have not received the annual disclosure, you may want to ask for it. ❖

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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.

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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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