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NEWS & VIEWS

for Homeowner Associations

January 2024

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2024 January New Year resolutions

By David Brock, PCAM



Happy New Year!

The month of January, for many, represents a time of new beginnings. We are given an opportunity to begin new habits and practices. We hope that for you, both personally and as a leader in your Association, that 2024 represents a year of greater fulfillment and less stress. We all want to experience greater success in how we spend our time and an important part of that is learning to enjoy and learn from the challenges we face.

As a board member of your Association, we are hoping that some of the 24 habits and practices we provide here will make your life better and your board service more manageable.

Here are 24 ideas to consider for this new year.

The Board

1. Have all of the Board members sign a *Code of Conduct* when they begin service on the Board and each year. (Find the Code of Conduct here: <https://www.bevenandbrock.com/board-member/>, #22).
2. Understand the board member role is to serve in a fiduciary capacity for the members.

"2024 January New Year resolutions": continued on page 6.

New, Helpful HOA Laws for 2024

By Brian D. Moreno, Esq., CCAL



1. Reduced Quorum Legislation

Historically, community associations have struggled with holding elections due to apathy and/or difficult quorum thresholds. Associations would be left with the same directors in place for years. The inability to hold elections also frustrates the democratic process and damages the trust among owners that feel incapable of voicing an opinion about the composition of the board of directors.

Assembly Bill (AB) 1458 (which revises Civil Code section 5115 and Corporations Code section 7512), provides associations with the opportunity to reduce the quorum threshold to 20% so that an election that would normally not proceed due to lack of quorum could be held. This provides relief to associations that are unable to achieve quorum, which can save a significant amount of money for communities that would otherwise need to extend voting deadlines to collect more ballots, amend the governing documents to reduce the quorum threshold through a membership vote, or petition a court for relief.

To trigger the reduced

quorum threshold per statute, the association must include the following language in its general notice: *"The board of directors may call a subsequent meeting at least Twenty (20) days after a scheduled election if the required quorum is not reached, at which time the quorum of the membership to elect directors will be 20 percent of the association's members voting in person, by proxy, or by secret ballot."* Accordingly, an association could choose not to trigger the 20% quorum and decide to operate as it historically has.

Be mindful that AB 1458 only applies to membership meetings to elect directors, and it does not apply in recall elections. All in all, the legislation can be significantly helpful to associations that struggle with holding elections due to lack of participation on the part of the membership.

2. Virtual Meetings

Another law that will benefit community associations is Assembly Bill 648, which allows associations to conduct a board or membership meeting solely by video or teleconference, without a physical location. This is a long-awaited bill that solidifies the COVID-19 shift in our industry from in-person meetings being expected, to virtual meetings now

"New, Helpful HOA Laws for 2024": continued on page 7.

Only twelve months remain until the deadline for compliance with SB326 on January 1, 2025.
As a resource to companies providing the inspection service, you may go to <https://www.bevenandbrock.com/board-member/> See #20.

Navigating California's Building Balcony Safety SB326 A Comprehensive Guide for HOA Boards

By Omid Ghanadiof, DrBalcony



As a Board member of an HOA in California, it is essential to stay informed about the latest legislative developments that impact your responsibilities and obligations. The "balcony law" also known as SB326 has been enacted to enhance safety standards for multi-unit residential buildings. We are now beginning the final year in which compliance must be completed.

This article's aim is to provide a comprehensive guide to help you prepare yourself and your building for compliance with these

important guidelines.

SB326, also known as the "Building Inspections: Balconies and Elevated Walkways" bill, was signed into law in 2019. This legislation aims to prevent accidents related to building structural issues, with a specific focus on balconies and elevated walkways.

When conducting inspections of buildings in accordance with SB326 in California, inspectors follow specific guidelines and checklists to assess the condition and safety of the exterior elevated elements, such as balconies, decks, stairways, and walkways. While specific checklists may vary slightly based on the inspector or the building's unique characteristics, here is a general checklist that inspectors commonly use to evaluate buildings and determine compliance:

1. Structural Integrity:

- Inspect the structural components, including beams, columns, and support systems, for signs of deterioration, decay, or damage.
- Look for signs of sagging, cracking, excessive movement, or other indications of compromised structural integrity.

2. Waterproofing and Drainage:

- Check the waterproofing system, including membranes, sealants, and flashing, to ensure effective protection against water intrusion.
- Evaluate the drainage system to verify that it effectively directs water away from the building and prevents pooling or accumulation on balconies and elevated walkways.

3. Guardrails and Handrails:

- Examine the guardrails and handrails for stability and secure attachment to the structure.
- Ensure that guardrails are of appropriate height and designed to prevent accidental falls.
- Confirm that handrails are properly installed and graspable for optimal safety.

4. Balcony Surface and Flooring:

- Inspect the balcony surfaces

and flooring materials for signs of deterioration, such as cracking, rotting, or loose tiles.

- Check for trip hazards, uneven surfaces, or any other conditions that may compromise safety.

5. Corrosion and Rust:

- Assess metal components, such as connectors, fasteners, and structural elements, for signs of corrosion or rust.
- Pay attention to areas where metal is exposed to the elements, as these are particularly susceptible to degradation.

6. Proper Anchoring and Connections:

- Verify that all elevated elements are securely anchored and connected to the building's structure.
- Inspect fasteners, bolts, and connectors to ensure they are properly installed and not showing signs of deterioration.

7. Documentation and Maintenance Records:

- Review documentation related to previous inspections, repairs, and maintenance activities.
- Ensure that required inspection and repair records are available for review, as mandated by SB326.

Why you need to obtain a permit for repairs?

- **Accountability and Liability:** By obtaining a permit, you demonstrate your commitment to fulfilling your responsibilities as a board. In case of any accidents or structural failures, having a permit and documentation of inspections can provide legal protection. It demonstrates that you have taken the necessary steps to ensure the safety of your building and its occupants.
- **Transparency and Trust:** Obtaining a permit and following the proper channels shows transparency to

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"Navigating California's Building Balcony Safety SB326...": continued on page 7.

Fannie Mae and Freddie Mac Release Lender Bulletins for Condo Mortgages

By Dawn Bauman, Community Associations Institute



Within the past few weeks, Fannie Mae and Freddie Mac released lender bulletins as a step toward making temporary requirements permanent. The

temporary requirements addressed issues of structural safety in condominium and housing cooperative buildings in response to the Champlain Towers South condominium collapse.

Lender bulletins are the prescriptive requirements mortgage lenders must comply with to have their loans backed or purchased by Fannie Mae or Freddie Mac. As of 2023, the National Association of Realtors says Fannie Mae and Freddie Mac support around 70 percent of the mortgage market. This means that most conventional loans offered by private lenders end up being backed or purchased by one of the two entities. Most lenders offering mortgages to condominiums will need to comply with Fannie Mae and Freddie Mac requirements.

According to the Federal Housing Finance Agency (FHFA), the conservator of Fannie Mae and Freddie Mac, these lender bulletins are the first step toward implementing permanent lender requirements. The next steps will include stakeholder meetings with lenders, realtors, engineers, reserve professionals, attorneys, and other parties.

The recent lender bulletins purport to clarify definitions regarding critical structural repairs, deferred maintenance, reserve studies and funding, pending litigation, and more. While definitions have been added, it is clear these explanations are leading to stiffer requirements for condominium and housing cooperatives.

CAI continues to work collaboratively with the Community Home Lenders of America and the National Association of REALTORS to urge changes to the requirements before they become final and seek greater transparency in the process.

The Fannie Mae and Freddie

Mac "questionnaire" that many mortgage lenders use to populate their questionnaires has not been changed or updated at this point. Below are highlights of the lender bulletins:

- **Special Assessments** - must be reviewed by lenders to determine the purpose of the assessment, timing of execution of the assessment, original amount, expected date of being paid in full, and whether the assessment is related to a critical repair. Buildings with special assessments are a red flag for Fannie Mae and Freddie Mac and may result in ineligibility.
- **Inspection reports** - if there is a structural or mechanical inspection report completed within the last three years, the lender must obtain a copy and review the report. If the report indicates an evacuation order, unaddressed critical repairs, or other habitability concerns, the project building/association will be deemed ineligible.
- **Reserve study and funding plans** - must comply with strict requirements including updates every three years. Furthermore, the reserve study must comment favorably on the project's age, estimated remaining life, structural integrity, and the replacement of major components. This will be problematic for almost all condominium and cooperative buildings as a reserve study is a budgeting tool, not an inspection report that will provide comments on structural integrity.
- **Projects in litigation** - now include alternative dispute resolution (ADR) or litigation proceedings - unless the ADR proceeding involves only minor matters that do not affect the safety, structural soundness, functional use or habitability of the project. The expansion of this definition will have unintended consequences for buildings in litigation that are completely safe.
- **Reciprocity** - Freddie Mac may

"Fannie Mae and Freddie Mac Release Lender...": continued on page 6.



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Is Your Association Manager Certified?

By David Brock, PCAM

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

Common-Interest-Developments (CID) have a wide range of choices when it comes to selecting 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 became law in the Business and Professions Code (Section 11502). The section 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 did not require that 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 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 very important that you make the best possible decision 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 distinguishes those who are committed to the industry from those who simply responded to a job posting by a management company.

The position of association manager requires general knowledge as well as a variety of

"Is Your Association Manager Certified?": continued on page 5.

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

skills. Certification of a manager not only means that they are committed to the industry, but they are also committed to improving their work by ongoing educational opportunities. 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 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 an ownership interest. As a board member, you should know when the manager benefits in other ways from your relationship.
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 2024, all but one 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

As of January 1, 2024, our newest manager, Joseph Castro, has completed the M-100 Essentials of Community Management courses and successfully passed the final exam. He is currently in the process of preparing for the National Certification examination.

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

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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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"2024 January New Year resolutions":
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3. Always be on the lookout for great prospective board members.
4. Implement for each board member a specific role on the board, i.e. Treasurer, Secretary, Maintenance liaison, President, special projects, landscape, etc.

Meetings

5. Meet regularly based on your needs, but not less frequently than quarterly.
6. Structure meetings to last no more than 90 minutes, preferably 60.
7. Understand the difference between Open Board meetings and Executive Session meetings.
8. Post Agendas four days in advance.
9. Allow owners time in Open Forum to address the board on concerns.
10. Discussions should be balanced between all board members and not dominated by one board member.

Community

11. Commit to holding one or two community-wide events during the year.
12. Encourage constructive input from owners on issues. Set an example of polite and respectful dialogue.
13. Communicate with owners on important issues before taking a vote and use email between board members sparingly.
14. Resolving conflict: Consider a casual conversation before escalating to a letter from the manager or an attorney.
15. Establish or revise Rules and

Regulations that are reasonable and applied equally to all owners.

Finances

16. Obtain a full Reserve Study every three years and update it each year in between.
17. Review your financial reports monthly. Review a "budget comparison" report and an "aging receivable" report at a minimum each month.
18. Take action on delinquent owner accounts that are at least 90 days behind in payment.

Maintenance

19. Understand that the lowest price may not always be the best choice.
20. Avoid conflicts of interest and even the appearance of conflicts.
21. Work with insured vendors and licensed vendors where appropriate.
22. On major jobs, utilize a consultant to write specifications and observe the job as it progresses.
23. View your property as a significant investment that grows in value as it is properly maintained.

Insurance

24. Make sure that your agent is knowledgeable about Common-Interest-Developments and attends a board meeting once a year to discuss your coverages. Agents with the CIRMS (Community Insurance and Risk Management Specialist) are the most qualified, however, an agent with many years of experience and who specializes in the HOA industry may also be qualified. ❖

"Fannie Mae and Freddie Mac Release Lender...": continued on from page 3.

rely on Fannie Mae's Condo Manager list of ineligible projects and both Fannie Mae and Freddie Mac can look to condominium associations certified by FHA. Clear databases are being created to track eligibility. CAI continues to work with Fannie Mae, Freddie Mac, FHFA, and members of Congress to urge changes that will keep buildings safe for owners and maintain access to credit for condominium homebuyers/sellers.

Find this information and much

more in these links.

Freddie Mac Lender Bulletin <https://guide.freddiemac.com/app/guide/bulletin/2023-15>.

Fannie Mae Lender Bulletin <https://singlefamily.fanniemae.com/media/36376/display>

Dawn M. Bauman is CAI's senior vice president of government and public affairs and the executive director of the Foundation for Community Association Research, has worked for CAI for more than 20 years at both the international and chapter level. ❖

*"New, Helpful HOA Laws for 2024":
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being the usual practice. Board and membership meetings can be held virtually without designating a physical location for members to attend, subject to the following conditions:

- A. The notice of the meeting must contain clear technical instructions on how to participate.
- B. The notice must contain a telephone number and email address of a person who can provide technical assistance before and during the meeting.
- C. The association must provide a reminder that members may request individual delivery of meeting notices, with instructions on how to do so.
- D. Every director and member

must have the same ability to participate in the meeting that would exist if the meeting were held in person.

- E. Any vote of the directors shall be conducted by a roll call vote (each director is called by name, and the vote recorded).
- F. Participants must be given the option of participating by telephone.

The caveat is that a meeting at which ballots are counted and tabulated cannot be entirely virtual. The meeting must be conducted at a physical location or a hybrid meeting.

AB 648 will allow for virtual meetings that are oftentimes more productive and efficient. In addition, virtual meetings tend to encourage owner attendance and participation at meetings while at

the same time allowing the board and management to have a certain level of control over the conduct of the meeting. That said, boards should consider adopting meeting rules that include a protocol for handling the technology associated with the virtual meeting. For example, will comments be allowed? How will the association verify the identity of the participants? Will "backgrounds" or others in the background be permitted? These and other issues should be carefully considered when adopting meeting rules for virtual meetings.

Brian D. Moreno is a practicing HOA attorney, and a member of the distinguished College of Community Association Lawyers. Mr. Moreno can be reached at either bdm@moreno.law, or by calling (888) 578-9673. ❖

"Navigating California's Building Balcony Safety SB326...": continued from page 2.

owners, prospective buyers, lenders, and regulatory agencies. It enhances the trust and confidence they have in your property. It also allows residents to have peace of mind, knowing that the building has undergone thorough inspections and necessary repairs to ensure their safety.

- Future Reference and Maintenance: Permits and associated documentation create a record of inspections, repairs, and maintenance activities performed on the balconies or elevated elements. This record serves as a valuable reference for future inspections, providing a history of maintenance and repairs. It helps to establish a maintenance schedule and track the lifespan of different components, ensuring the

ongoing safety and integrity of the building.

- Verification of Qualified Inspections: When you obtain a permit, it often involves submitting inspection reports from qualified professionals who have assessed the condition of the balconies or other exterior elevated elements. The permit process provides a system of checks and balances, ensuring that the inspections are conducted by licensed and knowledgeable experts who are familiar with the relevant safety standards.
- Working on the building without a permit can lead to serious consequences if the city or county discovers it. They have the authority to halt your project and penalize both you and the contractor for a minimum of 90 days.

Conclusion:

The aim of SB326 is to enhance

safety standards in multi-unit residential buildings, emphasizing the inspection, maintenance, and repair of exterior elevated elements like balconies and walkways. As a responsible board member, it is crucial to familiarize yourself with the requirements of these bills, schedule regular inspections, and promptly address any identified safety hazards. By adhering to these guidelines, you prioritize the well-being of your residents and contribute to the overall safety of your property.

Omid Ghanadiof is a co-founder of EEEAdvisor Engineering Tech firm, a specialized engineering inspection firm active located in California. EEEAdvisor Engineering assists rental property owners and homeowners associations (HOAs) with compliance with state mandated balcony inspections per SB 326. For more information, contact Mr. Ghanadiof at (805) 312-8513 or info@DrBalcony.com. ❖

About this newsletter:

HOA News and Views has been published and provided free of charge to board members in Los Angeles county for over 30 years. This issue is our 120th.

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.

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BEVEN & BROCK NEWS & VIEWS for Homeowner Associations

HOA BOARD MEMBER EDUCATION

Education for volunteer HOA board members is essential for success as board members. Due to the ever-increasing complex and changing nature of the laws and regulations that impact common-interest-developments staying on top of these changes greatly increases a board's member ability to succeed in their role, and operate in confidence

There are several ways for board members to be educated, and Beven & Brock offers two types of training for board members.

UPCOMING DATES:

Board Training - Date to be set in Spring 2024

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, 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.

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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