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HOA Advice From A Board Member

By Strefan Fauble

I have three bits of advice: “Diversify the Board,” “Run a tight meeting,” and “Be far-sighted.” Left at that, the advice is scrawny. Let me put some meat on the bones:



Diversify the Board

Running an HOA requires the skills of a lawyer, a manager, an accountant, an interior designer, someone with knowledge of the history of your HOA, and someone with enough mechanical knowledge to know how to solve the physical problems of your building. I am not suggesting Board members act as your HOA’s attorney or plumber; for liability and other reasons, they should not. However, those skills are essential to identify and anticipate problems and have a sense of how to proceed. Solicit owners who have those skills, not several owners who over-represent one skill. A word of caution, however: Solicit owners with the right temperament. Someone who cannot calmly accept being out-voted, should not be on the board.

“HOA Advice From An HOA President”: continued on page 3.

Board Guidance - Making the BEST Decisions ...the Secret to a Healthy HOA

By David Brock, PCAM

Quite possibly, the most important aspect of serving on an HOA Board is the act of making decisions. The board is charged with the responsibility of providing leadership to the community, which involves multiple areas such as major repairs, finances, and legal compliance among others. All these areas, as well as others, involve **decision-making**. There are a number of obstacles that exist which contribute to poor decisions and there are important strategies that a board can implement that will help to provide for the better decisions –the best possible ones.



This article will look at the challenges and benefits of healthy decision-making and offer some general advice for boards in making the best decisions and reducing future liability.

Obstacles to good decision-making include the following:

1. **Lack of full board engagement:** Too many boards function without the full number of members as indicated in the bylaws. This is an ill-advised and dangerous situation for both the board members and the association. If there are one or two board members who are the only active board members, the priority should be to fill the empty seats with active and engaged board members. Don’t make any important decisions until most of the seats are filled, except in the case of emergencies which require immediate action.
2. **Timing:** Some boards feel that rushing a decision is necessary. It is possible that quick decisions for low-impact issues may be fine. However, high-impact decisions, which usually involve major contracts or increases in HOA dues should take more time. Avoid the desire to be impulsive and move fast. Ask, *“Is it necessary to make this decision now?”* Group (or board) decisions will always take more time and it is important that board members understand and accept this. Board members can get frustrated about the slow process of making decisions, however, working as a group on behalf of the owners inevitably takes longer. Rushed decisions carry a greater potential for future problems, or mistakes that will involve more time and potential expense.
3. **Lack of community input:** Transparency in discussions is important for high impact decisions. Owners or members should be aware when their board will be discussing very important issues such as increases to assessments or Special Assessments. The legal requirement for announcing the meeting to owners must include an Agenda

“Board Guidance - Making the BEST Decisions...”: continued on page 2.

have a difficult time later when they don't like a particular board decision. While email discussions among board members are permitted, they are not advised for decisions with significant community impact. There are benefits and challenges with email, but it is not the best way to have important and significant decisions. Certainly discussions by email are very convenient, but they miss some aspects of dialogue that occurs best in person such as non-verbal cues, body language, tone of voice and facial expressions. Working as a team in the same room builds stronger rapport and trust from the community.

- 4. **Personal bias:** It can be very difficult to not skew a discussion and ultimately a decision to your personal view. As a board member with fiduciary responsibility, you must decide what is best for the owners and leave your own interests *at the door*. Understandably, this is not always easy, but it is required.

Boards have options in terms of the format of the discussion process and fewer choices when making the actual decision. Boards will often communicate with each other by email on HOA business. However, email discussions by boards do not constitute *a legal meeting of the board*.

Board discussions by email are allowed, but actual **decisions are NOT allowed.** Only board meetings in which a quorum of the board gathered, whether digitally or in person, at the same time are valid for making decisions.



The common outcome from this is that boards will freely discuss issues by email and then hold a very brief meeting digitally to make (or announce) their decision on an issue. However, this approach may be acceptable for some low impact issues, however, not at all appropriate for decisions that will have a significant impact on the members.

Allow me to explain further. Low impact decisions may include changing the service level with a vendor, such as the gardener, which has little to no impact on what the members will experience. However, this is not the case where the board is considering a special assessment or an assessment increase. These, and other similar decisions, should not be done by email but only in a *properly noticed board meeting*.

Even though a board can legally discuss issues by email, it doesn't mean they should do it. Always think about the impact of every decision from the members' and homeowners' perspective.

The board President must lead the process on how much "*private email discussion*" should occur on an issue and be able to move the discussion to an open board meeting in the future where owners can attend and speak to an issue. Ultimately, the board's decision will have a greater chance of acceptance and will withstand less scrutiny if the board engages in meaningful discussion in view of the owners.

Finally, a word or two about **Board Dynamics...**

Boards are as diverse as people are. There are *leaders* and there are

"After the Wildfires...": continued on page 3.

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"Board Guidance - Making the BEST Decisions...": continued from page 2.

followers on boards. Some board members may be more verbal and opinionated, and some on the board may say *very little*. All voices should be heard, and the President will need to balance and manage *the airspace* among all members, allowing for all to be heard.

Some boards form *sub-groups* which can contribute to poor decisions. This can happen when board members are *friends* outside of the board, and they *vote as a block*. I have heard stories from board members who don't *make the cut* and are always out voted. Serving on a board is about *service to the community* and not about power and control. And while board members don't have to be the best of friends, they should strive to be courteous and civil. In fact, there may be issues that divide board members, however, we are all on *the same team*. Civility, despite disagreement, must always be the guiding principle of a healthy board.

Every board needs a "devil's advocate". The term "devil's advocate" has origins in the Catholic Church and is used to describe *someone who argues against a prevailing opinion*, often for the sake of debate or to explore different perspectives. A healthy discussion can and should include disagreement if it is for the sake of making a strong and better decision.

Finally, every board should seek to avoid both the *Abilene Paradox* and *Groupthink* which involve flawed group decision-making. The *Abilene Paradox* describes a situation where a group collectively agrees on a course of action that no individual member truly desires, often due to a fear of being the dissenting voice. *Groupthink*, on the other hand, is characterized by a strong desire for harmony and unanimity which can lead to a suppression of critical thinking and a failure to realistically assess

alternative options.

If you are interested in learning more about group decision making, research the *Abilene Paradox* and *Groupthink* on Google or YouTube.

Thank you for your perseverance to read this entire article. It was written based on forty years of experience in Home Owner Association management. I hope the decisions that your board makes are the best possible ones for every issue you face, and that your role as a board member becomes easier every day because of your care in making the best decisions for your HOA. ❖

"HOA Advice From An HOA President": continued from page 1.

Run a Tight Meeting

All of those who volunteer for the Board are indeed just volunteers. Use their time judiciously by publishing advanced agendas, sticking to the agendas, and keeping their time commitments to a minimum. The President (or whoever runs the meeting) should ensure that all and only the facts and considerations relevant to the issue on the table are addressed and that the Board arrives at a decision that squarely resolves the issue. Unanimity is great, but not required; Board members need to understand that. Through these efforts, Board members will know that the HOA values their time and expertise, and they will be more willing to share it.

Be Far-Sighted

1. **Establish and clarify procedures and key rules when the stakes are low.**

What features, if any, besides improvement to a unit is interior, is an individual owner responsible for? What changes to an individual interest are subject to Board approval? What are the procedures and standards for that approval? Who is responsible for what

kinds of damage, and under what circumstances? These and other questions about fundamental matters are *not* better left to a later day—because the later day will be when a dispute has arisen and the stakes, and, thus, each owner's self-interest are high. Make sure in advance of a dispute that the rules

"HOA Advice From An HOA President": continued on page 4.



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*“HOA Advice From An HOA President”:
continued from page 3.*

in your association’s governing documents address these issues, that the Board agrees about the interpretation of the rules, and that the members have been given proper notice of the rules and the Board’s interpretation of them.

2. Ask lots of “what ifs.”

Will the rules in your governing documents actually work when you need them to? Find out by asking lots of “what ifs.” A real-life example: While reworking our



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CC&R’s, our Board realized that at least one “combined” unit in our building might someday be physically split and come under separate ownership, though no one expected that to happen. We asked lots of “what ifs” and realized that, if the unit split, then many provisions in the governing documents would become serious problems. The assessment percentages would no longer add up to 100%, the entitlement to certain parking spaces and basement lockers would become uncertain, and so on. If the Board did nothing and the unit split, the Board would have to address these issues at the worst possible time, namely when there would be two owners with competing interests. The Board therefore created contingency provisions designed to address fairly everything that would be affected if the units split, with the then-unitary owner not objecting. About a year later—surprise!—the unit split. Everything went smoothly, like following a cookbook recipe. Your association is unlikely to face this same situation, but it is a useful example, I hope, of how to anticipate problems.

3. Responsibility should follow knowledge and power.

Make the party who can easily identify or deal with a problem responsible for addressing it. A real-life example: Several of the units in our building have balconies with wrought iron. The balconies are exclusive-use common areas for their adjacent units. Shy of looking up at the building through a telescope, no one but the adjacent owners can assess the condition of their balconies’ wrought iron. The Davis-Stirling Act’s default rule, which says that the HOA is responsible for repairs of exclusive use common areas, does not make sense in this situation. When revising our CC&Rs, our Board made maintenance, repair, and, if necessary, replacement of a balcony is wrought iron the responsibility of

the adjacent owner. This is to avoid an owner’s ignoring the growing rust on his balcony and then expecting the HOA to foot the bill for the resulting damage. Similarly, our Board revised our governing documents to provide that if the HOA’s sprinklers are causing on-going water damage to an owner’s unit, the HOA is not responsible unless and until the owner puts the Board on notice, since the owner is in the best position to see what is happening. The owner should not be able to sit back while the HOA’s sprinkler slowly rots the owner’s windows and then expect the Board to pay to replace them.

4. Make sure your rules are enforceable.

When you amend your governing documents, including creating or amending operating rules, make sure you follow all of the requirements in the Davis-Stirling Act. (If you have not done so, do it now.) Otherwise, an owner could assert, correctly, that the rules are unenforceable. That will occur, of course, precisely when you are desperate to enforce the rules.

5. Think twice before you send that email!

Finally, resist the impulse to send that snarky email, even if the recipient deserves it. Think about whether the email could create other problems or liability. In particular, consider whether the email could be interpreted to suggest that the Board is making a decision based on animus or other illegitimate grounds. Imagine a neutral third party—a judge, say—unfamiliar with the background of the dispute, and ask yourself what that judge would think of the email. If you would not be totally comfortable with the email being labelled “Exhibit A” in a lawsuit before the judge, don’t send it.

Stefan Fauble serves on the board of his 14 unit historic association in Pasadena and for many years served as President. ❖

Rooted in Value: How Proactive Tree Care Saves HOAs Money and Boosts Curb Appeal

By Gustavo Mendoza, Arborist



As communities mature and landscapes evolve, one element remains vital to both curb appeal and safety: trees. These living assets provide

beauty, shade, and value, but only if properly maintained. For HOA boards, managers, and residents, understanding the importance of tree trimming and staying up to date on best practices can lead to safer neighborhoods, healthier trees, and more efficient budgeting. Here's what you should know about tree trimming and some key industry trends that can help your HOA save money while keeping your properties looking their best.

Why does tree trimming matter? Tree trimming is about more than just aesthetics. Regular maintenance helps prevent property damage from falling limbs or overgrown branches touching roofs and power lines. Maintaining the tree's health by removing dead or diseased limbs allows more light and air to circulate. Pruning also improves safety by eliminating weak or dangerous branches that pose a risk to pedestrians or vehicles. Lastly, pruning increases visibility of signage, intersections, or lighting fixtures. Neglecting tree care can lead to costly emergency removals or even liability issues if a tree causes injury or damage.

One way HOAs can save money is by scheduling tree trimming during the right season. So when is the optimal timing for tree pruning? In Southern California most trees can be pruned at anytime of the year with the exception of cone bearing trees such as pines, cedars, junipers, and cypress trees. These trees attract wood-boring insects. These insects are most active during the warm weather seasons. Therefore, we recommend these types of trees to be pruned during the late fall or winter. Working with

a certified arborist ensures that trees are trimmed at the right time and in the right way.

Technology has helped with the timing and tracking of maintenance of trees. A growing trend in the industry is the use of tree mapping and inventory software. This technology creates a digital map of all trees in a community, complete with species type, health assessments, trimming history, and maintenance schedules. By knowing exactly what trees you have and when they need service, HOAs can plan trimming cycles more efficiently, budget predictably year over year, and prioritize trees in poor health before they become liabilities. Tree mapping is especially useful for larger communities with dozens or even hundreds of trees. Many tree service companies now offer this as part of their annual maintenance packages.

As older trees are removed due to age or disease, replanting becomes critical. HOAs are increasingly choosing drought-tolerant and low-maintenance species that thrive in local climates and require less water and pruning. Native species not only adapt better but also tend to have fewer pest issues and provide important habitat for birds and pollinators. Consulting an arborist before planting ensures the right tree is selected for the right location, avoiding issues like root damage to sidewalks or conflicts with overhead wires.

Rather than hiring tree services on a one-off basis, many HOAs are now locking in multi-year contracts with reputable companies. This approach reduces costs through negotiated rates, ensures consistent care from year to year, and builds trust with a vendor familiar with your property. Plus, bundling services like trimming, emergency response, and stump grinding can offer additional savings.

Trees are long-term investments, and like any investment, they require

thoughtful management. HOA boards and property managers who stay informed about modern tree care practices can extend the life of their landscapes, reduce risk, and save money in the long run. Whether you're planning a trimming cycle or considering new plantings, partnering with certified tree professionals is key. Not only will your trees thank you, but so will your budget and your community.

Gustavo Mendoza, Arborist is with Green Valley Tree Care, Inc. and he can be reached at gmendoza@greenvalleytc.com. The company website is www.greenvalleytc.com



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Is your HOA on the “List”?

By Robert Nordlund, PE, RS

We are happy to report that Fannie Mae has created a new online tool to help associations become aware of their “Fannie Mae” eligibility status. Being “Fannie Mae Qualified” is important, as it allows individual consumers to get the most attractive mortgage terms (rates). Lenders like to sell mortgages in the association to Fannie Mae, enhancing their liquidity (having more cash on hand to lend), and thus enhancing their ability to make more mortgages available to other consumers. Providing a way for lenders to increase their liquidity by selling off their mortgages is good for our country and the reason why Fannie Mae and Freddie Mac exist. Mortgages in associations not Fannie Mae approved for one reason or another will not qualify for sale to Fannie Mae, and are thus burdensome to the lender. In those cases, the consumer will be offered

less attractive mortgage terms, which makes purchasing the home more expensive, driving down home values.

It is understandable that Fannie Mae (and Freddie Mac) have minimum physical and financial standards for Condo and Co-Op associations to appear on their “approved” list. For instance, a minimum Reserve Funding rate of 10% of total budget is one of their criteria. Both organizations justifiably increased their scrutiny over which associations were and were not “approved” for mortgage purchases after the tragic collapse of Champlain Towers South in 2021. This led to an increase in the number of associations not approved, confusion among managers and board members regarding if their association was approved, and if not, why.

Previously, some associations were unaware that their association had moved to the “unapproved” list. With this new Fannie Mae tool, managers and board members can go online to check on the approved/unapproved status of their association at any time – and do something about it as necessary. **Condo/Co-op Status Lookup for HOAs Now Available from Fannie Mae**

Fannie Mae has released this new lookup tool (go there directly by clicking bevanandbrock.com/fanniemaelist) to provide Condo and Co-Op managers and board members the ability to check if Fannie Mae is aware of any condition at the project that does not meet one or more of their published requirements. This new online tool exclusively for Condo and Co-Op associations creates transparency into the association’s Fannie Mae approval status by explaining why the association may not meet their published requirements.

[selling-guide.fanniema.com/sel/b4-2.1/general-project-standards](https://www.fanniema.com/sel/b4-2.1/general-project-standards)



Associations are uniquely positioned to remedy any identified conditions and are encouraged to work with the mortgage lenders currently working with individual buyers so that their lenders can submit clarifying documentation to Fannie Mae. Once received, Fannie Mae reviews the information to determine if an update to the project status is appropriate. If the association remains on the unapproved list, Boards and Managers can encourage their homeowners and potential buyers to work with lenders to explore other financing options.

Condo and co-op managers and board members can access the free tool by registering on the site and searching for their community by providing appropriate identifying information (name, address, tax id#...). Homeowners and potential buyers may also ask the manager or a board member to look up the association to learn the status in advance of any upcoming sale, purchase, or mortgage event.

Bottom line – no more “blacklist” of unapproved associations, and no more “black hole” of clarity on the matter. With this new online tool, Fannie Mae has made appropriate adjustments to enhance the efficiency of their Condo/Co-Op lending process and created a transparent environment that benefits all participants and drives sustainable homeownership.

Robert Nordlund is the Founder and CEO of Association Reserves, Inc., a leading nationwide reserve study company since 1986. The company’s website www.reservestudy.com is an excellent resource on all issues pertaining to reserves. ❖

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Reserve Disclosures; the Lending “Blacklist”

By Kelly G. Richardson, Esq. CCAL, HOA Homefront Column



Despite great efforts to lessen the problem, too many HOAs still have inadequate reserve fund savings. Civil Code Sections 5300(b)(2-7) and 5570 require detailed disclosures regarding reserves. The problem is so serious that the Department of Real Estate in September 2012 issued a “Consumer Warning: Underfunded Homeowners Associations” bulletin- still available on the www.dre.ca.gov website.

Homebuyers not reviewing the HOA reserve disclosures could be misled by their appraisal report. Real estate appraisers are not required to check the state of the HOA’s reserves, meaning that the home’s appraised “market value” may not be an accurate reflection of its true economic value.

Another powerful force is beginning to exert pressure on HOA homebuyers and therefore indirectly HOAs - the lending industry.

The Federal National Mortgage Association, aka “FNMA” or “FannieMae,” is one of the main purchasers of residential mortgages from lenders. FNMA has adopted “condominium project approval requirements,” and will not accept loans from ineligible condominium HOAs.

I contacted Natalie Stewart, President of FHA Review, a nationwide business based in California. Ms. Stewart said her firm has consulted over the past 15 years to over 10,000 HOAs

seeking approval for FHA and VA Certification.

In discussing reserves Ms. Stewart first commented that the current HOA reserve fund disclosures are usually not helpful to buyers, since “clients don’t get them until they’ve already signed purchase agreements. The big problem is transparency - Buyers are not receiving these important disclosures until almost the end of the process, not when they make the offer.”



Ms. Stewart said that the failure to allocate sufficient funds in the reserve savings account (10% minimum of the total budget) is a common reason for HOAs to fall short of FNMA eligibility. She said that the FHA, in addition to the 10% funding requirement also requires “adequate” reserve funding. Although “adequate” isn’t specifically defined, she said that the FHA among other things wants to confirm that reserves are sufficient to cover the HOA’s insurance deductibles.

A growing problem for California HOAs is FNMA’s “blacklist” - a list of HOAs that are specifically disapproved for condominium

loans. The list currently includes over 5,000 HOAs nationwide and 500 are in Southern California. Ms. Stewart says only the HOA’s manager or a board member can check to see if their HOA is blacklisted. The only other way to find out is if a homebuyer applies for a loan and they learn from their lender of the HOA’s blacklisted status.

Lenders have since 2021 tried to force HOAs to make significant statements about the known health of their buildings, and managers have been afraid of taking on liability through such reports. Ms. Stewart said that problem seems to be calming down, as HOAs have learned how to make those disclosures without making promises to lenders.

Ms. Stewart said that, in addition to inadequately funding reserve accounts, other common reasons for blacklisting are unfunded critical repairs, pending significant lawsuits by the HOA or against the HOA, and the #1 cause - not having full replacement insurance coverage of the condominium building.

If the legislature cannot force it, the DRE’s warning goes unheeded, and real estate agents are unable to focus clients on the importance of reserves, perhaps the lending industry will force HOAs to be more attentive to their reserves.

KELLY G. RICHARDSON is co-founder and Partner of Richardson|Ober LLP. In practice since 1983. Mr. Richardson can be reached at (626) 449-5577 or at kelly@roattorneys.com. ❖

About this newsletter:

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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 training for board members.

UPCOMING DATES:

No dates at this time

www.beveandbrock.com/BoardTraining.pdf

Free three-hour training course for current and prospective HOA board members. A course syllabus and informational handouts 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 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 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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