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## NEWS & VIEWS

for Homeowner Associations

July 2019

### Code of Ethics for Community Association Board Members

At least once a year, Board members should review how they operate in their commitment as a Board member to their association. This sample code of ethics as provided by the Community Associations Institute (CAI) is not meant to address every potential ethical dilemma encountered by a community association board member, but is offered as a basic framework that can be modified and adopted by any common-interest community.

#### Board members should:

- Strive at all times to serve the best interests of the association as a whole regardless of their personal interests.
- Use sound judgment to make the best possible business decisions for the association, taking into consideration all available information, circumstances and resources.
- Act within the boundaries of their authority as defined by law and the governing documents of the association.
- Provide opportunities for residents to comment on decisions facing the association.
- Perform their duties without bias for or against any individual or group of owners or non-owner residents.
- Disclose personal or professional relationships with any company or individual who has, or is seeking to have a business relationship with the association.

*Code of Ethics for Community Association Board Members: continued on page 6.*

### HOA SEMINAR

**October 22, 2019**  
**6:30 – 8:30 P.M.**

#### “Strategies to Achieve Excellence in HOA Leaders”

One of the great challenges of living in a common-interest development is having a well-functioning Association Board help make the best decisions for the overall benefit of the community. Unfortunately, creating high-functioning Boards is challenging for a number of reasons.

This highly interactive and relevant seminar will address how Boards can turn the tide of dysfunction and learn to function in ways that will bring the best possible results for the community.

Enhancing both communication skills and teamwork skills help Boards move forward. Some of the topics covered in this talk will include:

- Five elements of successful Boards
- Why teamwork matters for association Boards
- Why Boards collapse
- Why Group-Think holds Boards back
- Mastering conflict
- Communications strategies for dealing with difficult people
- Characteristics of a successful Board member
- Steps to effective decision making

#### Speaker: Dr. Lori Baker-Schena, MBA, EdD

Dr. Lori Baker-Schena is a leadership consultant and highly entertaining professional speaker who works with individuals and businesses, including community association management companies, to achieve high levels of excellence, productivity and profitability. Dr. Baker-Schena brings to her clients 35 years as a healthcare public relations and marketing consultant, and 25 years as a tenured university professor teaching public relations and journalism. Dr. Baker-Schena holds a bachelor's degree in Journalism and an MBA from California State University, Northridge, and a doctorate in Organization Leadership from the University of LaVerne.

#### Reservations required!

**Reserve your seat by email: “HOASeminars@bevenandbrock.com; or call (626) 795-3282, ext. 886.**

**Location: Pasadena First Church of the Nazarene  
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# Meeting Agendas: Simple, Required And Helpful!

By Dave Brock, PCAM



An “Agenda” is a legally required document for every meeting of the board and membership. We realize that some readers may not know and understand some “technical terms” of HOA leadership, so to explain it simply, an agenda is a list of items to be discussed at a meeting. While the law governing HOA’s requires an agenda, there are also some practical benefits to Board’s as well.

Since 2008, the Davis-Stirling Act has required that the board meeting *Notice and Agenda* must be provided to all members (owners) by one of several methods. The most commonly used method is to “post” the Notice of Meeting and the Agenda in a “prominent location that is accessible to all members”, provided that this is designated in the Annual Policy Statement. The required time frame to provide the *Notice and Agenda* is four days before the meeting, unless your governing documents require a longer period.

The meeting *Notice* must contain the appropriate information about the meeting: type of meeting (Board, Executive or Membership), the time, date and location. The Agenda must contain the items to be discussed. The items that are included on every Agenda should be the following: 1) Approval of prior meeting minutes, 2) Open Forum and 3) Review and approval of financial statements (also known as Financial Report). Other agenda items may include: 1) New business, and 2) Old Business, both of which must be delineated so that owners have an idea of what the Board is discussing and may choose to attend.

Executive session is available to Boards where a Board can meet without owner’s present, but that is only available on a limited basis. Only certain issues may be addressed in Executive Session.

The *Notice and Agenda* must include the fact that the board is intending to have an Executive Session portion of the meeting and must list the topics to be covered. The permitted topics include litigation, formation of contracts, member discipline, payment plans by owners, foreclosure, and personnel. In most meetings, where Executive Session is necessary, the Board handles this at the end of the Board meeting so that owners can leave. A member who is called to a “Hearing” or is facing discipline must be invited to participate when their issue is being addressed. A “Hearing” must occur when a fine for a violation of the rules, or a reimbursement of a repair is being imposed on a member.



If an item comes up in the meeting that is not on the *Agenda*, the Board is not able to discuss or act on that item but must place that item on the *Agenda* for a future meeting. If an owner raises a question about issue that is not on the *Agenda*, then the board may briefly respond to the member on the issue they have raised.

The Civil Code provides an exception for emergencies, such as, if an item came to the attention of the Board after the agenda was distributed, and if a majority of the Board present agrees that an emergency situation exists, it can be added to the Agenda for that meeting. An **emergency** is defined as “circumstances that could not have been reasonably foreseen by the Board, that requires immediate attention”.

While this article can only provide limited information on the requirements, the full law is available in the Davis-Stirling Act, Chapter 6, Article 2, sections 4900-4955.

Many legal requirements appear to add a burden to those impacted, such as already overworked Board members, but it is also possible that a law could be beneficial at the same time. How is that possible?

What are the benefits of an *Agenda*? There are several.

1. An *Agenda* provides a road map for the meeting. It helps the meeting stay on course.
2. *Agendas* that are timed help to structure the meeting so that it doesn’t last for multiple hours.
3. *Agendas* that have motions that will be voted on will help to allow the board members to be better prepared and facilitate a more organized and efficient meeting.
4. There will be no surprises, since newly introduced items cannot be discussed at that meeting. (emergencies are excepted).
5. Owners who don’t attend the meeting after knowing what is being discussed will have a difficult time challenging a Board decision later. However, if a Board discusses an issue in a meeting that was not previously announced, then the Board may be rightfully challenged on that decision.

The bottom line: be diligent to follow the law, as it will benefit you in the future. ❖

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## “Trouble in River City HOA”

Unfortunately, in the world of HOA living, one of the difficult issues that many associations face are conflicts and disagreements that become ugly, hostile and downright “unneighborly”.

What happened to *Mayberry RFD* where life was idyllic, or *Mr. Rogers Neighborhood* where everyone was your friend and Lake Wobegone, “...where all the women are strong, all the men are good-looking, and all the children are above average”. If Garrison Keillor lived in a homeowners’ association, he might have said, “where all the homeowners are beautiful and all the board members wise.” Unfortunately, those days are in the very distant rear-view mirror. You may be able to reminisce and find one of these shows on Netflix (or NPR) still.

What has changed in the culture that has brought about the change of how we relate now? What issues exist in planned development living that make today different than the past? Consider this short list:

- The **proximity** of residents which brings problems forward like noise, limited facilities, and parking.
- The **anger** in our culture (low level or aggressive).
- **Unmet expectations** -- that may not be realistic or are uninformed.
- **Instantaneous communication methods** that give rise to the expectation of instant results.
- **Differing views on finances and financial pressures**
- **Personalities** that are controlling or inflexible.
- **Ego issues** and the need to be right at any expense.
- **Inability to disagree** in a polite and civil way.
- **Unwillingness to listen and consider** a different point of view.

Perhaps, you have some that you would add to the list.

Is there any hope for HOA living? Actually, the news isn’t horrible. A 2018 survey, conducted by Zogby Analytics, reported that 85% of residents rate their overall community association experience as positive or neutral. Also, 84% say that their elected board “absolutely”

or “for the most part” serve the best interests of their communities. While a vast majority are happy, the 15% minority can be *very loud* and *skew the overall* perception of life in a community association. From our experience, it seems, that the 15% is present in most, if not every association.

Some have referred to the 15% as *bullies*. The origin of *bullies* within the Homeowner Association may be a result of conflict within the community or it just may be consistent with who they are in all aspects of their lives. Conflict in an HOA is understandable as the association issues revolve around two very important aspects of life: a person’s home and their money.

Let’s look at two of the two predominant relationships in HOA living: the *homeowner* and the *board member*.

### The Homeowner Bully!

There are multiple ways that the *homeowner bully* can develop, and with understandable reasons. In some cases, the causes may be real and in some, perceived or feared. The most common reasons are a) disagreement with board actions, either the current board or a previous one, b) a personal dislike of the Board or a particular Board member, c) a sense of powerlessness, d) feelings of not being heard, e) a distrust of authority, or f) a fear of change. When one or more of these issues exist and is combined with an inability to articulate them well, some people will act or react in ways that may be considered “aggressive” toward the Board or others in the community.

What can the Board do? The two most common and very human reactions are *flight* or *fight*. Some Board members will decide that they did not sign up for this and will resign. Other Board members will choose to fight and may engage the services of an attorney. The latter approach may be very appropriate, especially if there is a threat of physical harm or damage to property. While this is an expensive solution, it may be necessary. Another reaction is to ignore the bully, and hope the problem goes away. Boards may also choose to

“circle the wagons”, so to speak against a homeowner who they perceive to be a threat. In their view, the homeowner may ask too many questions, at the wrong time, or in the wrong way, and appears as being a problem. A board can easily feel unappreciated for all that they have done, and it is understandable to not have warm and cozy feelings about this owner. While challenging to do, a board should always strive to maintain themselves in a professional and courteous posture, and communicate in as much a transparent way as possible.

The law provides a possible remedy for issues like this: “Internal Dispute Resolution” (or “IDR”). An IDR occurs when a Board member meets with the owner for a casual conversation in a neutral location. To be effective the conversation should involve the Board member listening to the owner and attempting to understand the source of their issues with the Board or Association. The simple act of listening has the potential of resolving disagreements. You may also find that the feelings are justified, and the Board may need to change their thinking. Perhaps, offering an apology over some past issue may help to diffuse the emotions and tension. There is no doubt that this approach, if successful, will be more effective over the long term and less costly.

### The Board Member Bully!

A Board member *is* in a position of power and this can provide an opportunity for bullying to occur. A Board member can easily become inflexible and insensitive to the community. Unfortunately, other Board members may be reluctant to stand up to the *Board member bully* because in their view, it is easier to remain quiet. Apathy on many Association Boards is a perfect environment for this situation to occur. If Board members don’t care and allow one board member to do everything the *Board member bully* can develop. It is important for all Board members to speak up, even when you may think it is easier to be quiet. If you are on this kind of a Board, you should speak privately

“Trouble in River City HOA”:  
continued on page 6.

# Being A Good Neighbor Can Make You A Better Person

By M. J. Stevens



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What if being a neighbor made you healthier? A better person all-the-way-around? It can.

Even doing kind things for others, serving - volunteering helps with depression. It's called altruism (unselfish regard for or devotion to the welfare of others).

They say, "It's the little things that we do that make the difference". The "little thing" could be as simple as greeting each other in the hall or parking area, picking up a piece of trash, returning a lost article or securing one that has been left at the pool, opening a door or holding the elevator for a neighbor, finding out your neighbor's name (come on... you've seen them for a year!), watching out for the *children* in your community (the little ones and the teen-sized ones), also watching over the elderly in your community (If you haven't seen Betty in a while, go check on her. Even if she's fine, she'll be touched that you cared).

There's always the "bigger things," too, that are really about changing our own lives as neighbors:

- ◆ Choosing to complain and gossip less about the community and the Board. Go to a Board meeting. Pose a question or concern with a letter. Don't write a threatening letter. Be brief and clear in your letter, stating that you will be following. That's your responsibility—the follow-up.
- ◆ Attend meetings and read the Board's Minutes. Boards are all volunteers. They're taking time away from their personal and family schedules to care for the common needs and issues of your condominium complex. They deserve the respect of being heard and listened to as well.
- ◆ Propose and attend inexpensive activities that bring LIFE & RELATIONSHIP to your community. Some examples for the coming warm days of summer could be:
  - A Movie Night - throw up a white sheet and watch a PG movie in a common area such as the pool or a grassy area. Everyone bring your own

movie snacks. Drinks provided by the Board.

- Wine & Cheese Night before dinner. Everyone brings their favorite wine. Board provides some cheese and crackers, small sized sodas/juice boxes for the kids. Bring your own wine glass.
- Weekly BBQ Night If there's a common BBQ, you've got family-style eating available. Maybe Wednesday night is BBQ night. Bring your own meat to BBQ, and a side/salad to share with 8-10 people. It's great way to get to know your neighbors. Make sure there's a clear beginning and ending to dinner, and a rotating clean-up crew.
- Swim Party Maybe do some funny pool games that kids and adults can all do. Cheap and fun prizes for the winners. Hire a Lifeguard for 2 hours so there's a watchful eye over "the games".
- Have a Squirt Gun Party! Serve Ice Cream Sundaes or scoops of ice cream in dishes or in cones at the end of the "Squirt Gun War". Make up some rules to avoid injuries and so that "Mr. Wright doesn't get his windows watered."
- Back-To-School-End-of-Summer Party. See weekly BBQ Night, but maybe add in a "my favorite thing this summer was..." time.

Being a better neighbor has done astounding things across the country—cleaned up crime, brought people closer in a culture that is already isolated with its electronic devises, raised the knowledge of public awareness on issues that concern the large place everyone lives—the city-the county-the state.

What if you were known as *the nice guy in #280, the sweet family at 5704 Rose Drive, the wise and helpful Mr. Smith who lets you borrow his power tool or helped you repair your bike's flat tire?* You would be quietly and kindly contributing with *unselfish regard for the welfare of others.* ❖

# Reserve Studies "Undercover"

By Robert M. Nordlund, PE, RS, Association Reserves, Inc.

A long running joke in my extended family is that no one knows what I do for a living. It's even been suggested over the years that my company, Association Reserves, Inc., is simply a "cover" for my real profession as a hired assassin and that site inspections offer me and my team a convenient excuse for unhindered domestic and international travel. And so, one of the challenges of writing an article about Reserve Studies is first making sure the readers have a clear understanding of exactly what a Reserve Study is!

In 1998, National Reserve Study Standards (NRSS) were published that made explaining my line of work a little easier. At the very least, NRSS established standard terminology and identified the key three results of a Reserve Study:

- Component List (outlining the scope & schedule of Reserve projects)
- Calculation of Reserve Fund Strength (% Funded measure of whether current Reserve Fund has kept pace with past deterioration)
- Funding Plan (necessary to assure the timely completion of scheduled Reserve projects)

But knowing what belongs in a Reserve Study really does very little to explain the usefulness of the Reserve Study itself. So, let me spend a few minutes outlining how four different interested parties can find tremendous value in a Reserve Study:

1. Volunteer Board members- should value the Reserve Study as a form of protection against decisions that might otherwise be motivated by emotions, popularity or perception. Because all Board members serve in a fiduciary capacity, they need to be able to defend and justify the "soundness" of their actions to the homeowners. A Reserve Study should provide the Board with a sense of being well-armed to make wise business judgments. Reserve Studies also transcends Board turnover by offering decision-making stability from year to year.

2. Professional Managers- should value the Reserve Study as a planning tool. It is only by knowing exactly "where they are" that an organization can make wise and informed decisions about "where they want to go". Given the moving target nature of reserve planning (i.e., a regular pattern of reserve funding contrasted with an irregular pattern of reserve spending) it is valuable to have a reliable and consistent snapshot for the purpose of comparison and assessing progress each year. By watching the Reserve Fund Strength (% Funded) trend up or down over the years, Managers can see whether the Association is gradually under-reserving or strengthening its financial position.


3. Homeowners- should value the Reserve Study as an independent and accurate statement of fact regarding the current year reserve funding situation, as well as a schedule of repair & replacement projects that are slated for completion. The Reserve Study eliminates mysteries and surprises and is the place where these facts and expectations are assembled, documented, and communicated annually in one convenient location.

4. Potential Purchasers - should value the Reserve Study as a form of consumer protection. Because potential purchasers represent future homeowners, these buyers have a right to know the financial health of the Association, the history of repairs & replacements, and their risk of facing a Special Assessment.

You may find it interesting that I made no mention of state legislation governing HOA reserves, even though, as of this writing, 30 states have specific reserve funding laws on the books. The first reason is that I believe

*Reserve Studies "Undercover":  
continued on page 6.*





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<sup>2</sup> The interest rate and annual percentage yield may change after account opening. These rates are only available for AAB customers and community associations.



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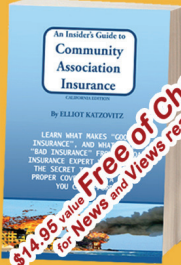




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**Board members should not:**

- Reveal confidential information provided by contractors or share information with those bidding for association contracts unless specifically authorized by the board.
- Make unauthorized promises to a contractor or bidder.
- Advocate or support any action or activity that violates a law or regulatory requirement.
- Use their positions or decision-making authority for personal gain or to seek advantage over another owner or non-owner

- resident.
- Spend unauthorized association funds for their own personal use or benefit.
- Accept any gifts—directly or indirectly—from owners, residents, contractors or suppliers.
- Misrepresent known facts in any issue involving association business.
- Divulge personal information about any association owner, resident or employee that was obtained in the performance of board duties.
- Make personal attacks on colleagues, staff or residents.
- Harass, threaten or attempt through any means to control or instill fear in any board member, owner, resident, employee or contractor.
- Reveal to any owner, resident or other third party the discussions, decisions and comments made at any meeting of the board. ❖

*“Trouble in River City HOA”:* continued from page 3.

to the other Board members about your concerns to see if there is any support with the other members prior to addressing this situation. Sadly, unchecked power creates potential liability for the entire association.

There are several approaches to addressing a difficult Board member and the approach will depend on the severity of the problem. If you believe that the Board member is breaking the law, it would be best to consult with an HOA lawyer as to the best way to remove them from the board. Hopefully, the scenario is not this bad, and the Board member will agree to either to step off the

Board, if they realize the Board is united in their decision. If the President, Secretary or Treasurer is the bully, the Board can vote to remove them from their office but stay on the Board. This is a common and uncomplicated solution to this issue.

In summary, no Board member should have absolute authority or operate as if they do. Board service is intended to be a team effort and when the Board functions as a team the Association is the ultimate winner, as it should be in every HOA. After all, all owners are united in their financial investment in the community. ❖

*Reserve Studies “Undercover”:* continued from page 5.

strongly in the inherent value of a well-executed Reserve Study. The second reason is that reserve statutes (like most legislation) were codified by politicians, regularly ignoring the wise and practical input of industry professionals. The resulting legislation often contains confusing legal jargon and sets forth requirements that are, at best, awkward and cumbersome, and at worst, without merit.

The bottom line is that Association-governed community living involves shared expenses. The Reserve Study documents the cost of common area deterioration and recommends a Funding Plan not just so that that repairs & replacements can be completed in a timely manner, but so that every homeowner pays their fair share along the way.

If I divulge any more than that I’d have to kill you! ❖

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## 2019 Pending Legislation

It's that time of the year when your State representatives are working to either make life better or worse for Californians. We have a new Governor, and no one really knows how he will respond to the bills in the current legislative season, but we will find out later this year.

After many years of being handed new laws that many HOA Boards and Managers struggle with how to implement the best option is to participate in the process prior to the bills getting to the Governor's desk. The Community Association's Institute (CAI) through their legislative action committee (CLAC) recently held a two-day lobbying event in Sacramento in early April which was both educational and empowering. Your legislators want to hear from you, and our voices have an audience with them. If you are concerned about avoiding additional costs to implement new laws, and avoiding more onerous requirements, then your voice must be heard.

You may not be shocked to learn that the political process is complicated and highly politicized. There are always conflicting viewpoints, even within the Common-interest-development world and with the growing number of California residents who live in them, we can be a force to be listened to. Some Legislators may have lost sight of the fact that

within every HOA there are voters, and many of them in very small HOA's. It seems that the impression of some legislators is that all HOA's consist of hundreds of units that are run by Boards with unchecked power. We know this is NOT the case. Clearly, there is a great need for education of our legislators to let them know that some of the bills they are considering will have a negative impact on their constituents' monthly assessments.

Some of the legislation that is under consideration for this year is the following:

1. SB323 - Elections

Bill summary: this bill limits the Associations' ability to establish candidate qualifications and would prohibit the association from using a person or business employed (or under contract) with the association to act as an inspector of elections. This bill would make all balloting materials subject to the inspection and copying (including signed envelopes). Many see this bill as a potential violation of privacy. This bill is flying through the legislature and by the time you read this may have already been approved by both the Senate and the Assembly.

2. SB326 - Balcony bill

This bill would require condominium associations to perform a reasonably competent and diligent visual inspection of certain structural and related components to determine safety and potential risk. The bill would require that a report be prepared and provided to the association providing information including the physical condition and remaining useful life of the components every nine years. This bill is a repeat of 2018's balcony bill but has been negotiated to 9 years vs. 6 years. Governor Brown vetoed this bill last year, and it appears that this bill may have a decent chance of passage this year.

While this law does add a new burden (and cost) to HOA's, it is difficult to oppose a bill that represents an issue of safety for residents.

3. SB652 - This bill would prohibit governing documents of an association from prohibiting the display of religious items on the entry door of a member's separate interest such as a "mezuzah" or other symbols. An amendment to the bill would allow the association to ask residents to remove the item for maintenance or repair of the door or frame.

4. SB754 - This bill would amend the Civil Code and Corporations Code to allow election by acclamation where, as of the close of nominations for directors to the board, the number of director nominees is not more than the number of vacancies to be elected. While this bill would benefit many HOA's, unfortunately other language has been added regarding director qualifications that may make it difficult to support. We believe that a bill regarding voting by acclamation would be worth pursuing in the future, particularly for small associations.

We will update you in the next newsletter (October) to let you know the status of these bills. We encourage you to contact your state representatives to register your opinion on these bills. There are a couple of ways to track the status of any pending bill: The California Legislative Action Committee who is lobbying on your behalf: <https://caiclac.com/>, and the legislative site for the California legislature: <https://leginfo.legislature.ca.gov/> where you can learn the status of any pending legislation. A great place to go to find who your representative in the state government is: <http://findyourrep.legislature.ca.gov/>. Your voice needs to be heard to help fight legislation that is not good for your interests as a Board member or homeowner. ❖

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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 many ways for board members to be educated, and Beven & Brock offers two free ways.

### Upcoming events:

#### September 24, 2019: Board Training

Three hour training course for HOA current and prospective board members. A course syllabus and Certificate of Completion is provided. This class is taught by Kelly Richardson, Esq. of Richardson Ober, PC, 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.

#### October 22, 2019 - HOA FREE Board Seminar and Vendor Expo

See page 1 for more information



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