



BEVEN & BROCK

NEWS & VIEWS

for Homeowner Associations

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Issue No. 123

Minute Mastery 2.0: Making An Accurate Record Of Association Meetings

By Matt D. Ober, Esq., CCAL

Corporate Transparency Act - Time To Act

By David Brock, PCAM

Part 1 - History and Actions taken to challenge the CTA

In the April and July 2024 issues of Beven & Brock's News & Views newsletter, information has been provided regarding the Corporate Transparency Act, which requires incorporated homeowner associations to file a report online with the Financial Crimes Enforcement Network by no later than December 31, 2024. For more information and to file, visit: <https://www.fincen.gov/>



The prior articles that have been published on this topic can be found at:

April 2024 - Page 2

www.bevenandbrock.com/April2024.pdf

July 2024 - Page 1

www.bevenandbrock.com/July2024.pdf

We have been hoping, along with many HOA lawyers and other professionals, that common-interest-developments would get an exclusion or, at least, an extension of time.

The Community Associations Institute (CAI) has been at the forefront of advocating for engaging in this effort, but so far unsuccessfully. Visit this link to learn more: www.caionline.org/Advocacy/Priorities/CTA/Pages/landing.aspx

In addition, there are two bills in the US House and US Senate that are moving very slowly to delay implementation: SB3625 and HB5119. Contacting your Senators and Representative may be helpful.

As our April 2024 News & Views newsletter was headed to print, we received word that on March 1, a US District Court Judge granted a judgment to stop enforcement of the CTA. However, only the Plaintiffs in the case were granted this exemption.

It appears that the ability to challenge the implementation of the CTA is running out of time.

Part 2 - Registering with FinCEN

As it appears that the requirement to register with FinCEN is unavoidable, some have asked what happens if we don't.

The penalties for non-compliance can be significant. Any person who fails to comply with the registration requirements may be liable for a civil penalty of up to \$5,000 for each violation. Failure to comply includes the filing of false or materially incomplete information. Each day a violation continues constitutes a separate violation. In addition, the Secretary of the Treasury may bring a civil action to enjoin the violation.

Criminal penalty. It is unlawful to do business without complying with the registration requirements. A criminal fine and/or imprisonment for up to five (5) years may be imposed.

Also, in the event of a change of a Board member, Associations have 30 days to update their filing.

"Corporate Transparency Act - Time To Act": continued on page 2.



Board and Association meeting minutes are an association's official record of what occurred at a meeting.

Minutes are not a record of what everyone said during a meeting. It is an official record of the action taken at the meeting. In fact, overly detailed minutes can prove trouble for your Association.

Minutes are required at any Association or Board meeting. They serve as a record of the actions and decisions made at a meeting; however, they are not meant to be a transcript of the meeting. Minutes containing unnecessary, superfluous detail are more likely to present approval challenges and possibly lead to misinterpretations and second guessing of the board's decisions over time.

The following guidelines will help your Association maintain a concise, accurate record of the Board's decisions.

Format Of Minutes

The minutes should begin

"Minute Mastery 2.0: Making An Accurate...": continued on page 3.

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"Corporate Transparency Act - Time To Act": continued from page 1.

However, if there are no changes from year to year, then no additional

filing is required.

Common Interest developments who are incorporated are required to file and there are two choices:

- A) Outsource to a third party, at a cost of \$200-\$300/year
- B) File directly with FinCEN and update as required.

Resources for outsourcing are provided below.

The good news is that filing directly with FinCEN is not difficult or time consuming if you have everything you need when you begin. In our experience, the filing we did for ourselves at Beven & Brock took about twenty minutes.

The most challenging aspect of filing is that each "beneficial owner" must provide a Driver's license or another form of ID to upload. A "beneficial owner" is defined as an individual who, directly or indirectly, exercises substantial control over a reporting company.

Concerns have been expressed by some regarding the security of the information being provided to the person who is making the filing. There is a solution for that. A board member can register themselves and upload their Driver's license to obtain their own FinCEN ID number. That number can then be provided to the board member making the filing to enter on the registration for the company. If this is done, then board members won't have access to each other's information.

Part 3: Next Steps

1. The Board should appoint a CTA coordinator for the association.
2. Each board member should obtain their own FinCEN identifier number. Go to:

<https://fincenid.fincen.gov/landing>

Once submitted, you will immediately receive a FinCEN ID. Once issued a FinCEN ID, you may access, update, and correct any information on the same website. Provide the 12- digit FinCEN ID number to the CTA coordinator for your association.

3. Once the CTA Coordinator obtains all the FinCEN identifier numbers for each board member, he/she should gather the following information:

- a. Legal name of your Association found on in the by-laws.
- b. Federal Tax number
- c. State of incorporation

4. Once all items are in hand, go to: <https://boiefiling.fincen.gov/fileboir>

Remember, anytime a board member joins or leaves the board, the FinCEN filing needs to be updated within 30 days.

Additional Resources

FAQ Document: <https://fincen.gov/boi-faqs>

Quick Reference Guide: https://boiefiling.fincen.gov/resources/BOIR_E-File_Online_Quick_Reference_Guide.pdf

Step by Step Instructions: https://boiefiling.fincen.gov/resources/BOIR_E-File_Online_Step-by-Step_Instructions.pdf

Filing resources:

<https://www.legalzoom.com/business/business-operations/beneficial-ownership-information-report.html> \$149.00 to \$299.00

<https://ctareview.com/> \$295.00- includes updates; Youtube video on this site

There are many available and can be found on Google. No endorsement provided for any listed here. ❖



"Minute Mastery 2.0: Making An Accurate Record...": continued from page 1.

with the Association name and the date and place of the meeting. It should also state what type of meeting is being held, i.e., whether it is a regular or executive session Board meeting, whether it is a special meeting of the Board or membership, or whether it is an annual Association membership meeting. Those in attendance in an official capacity (such as a Board member, manager, guest, attorney, or similar guest) should be noted. The presence of a quorum and the time the meeting was called to order must be included. It is particularly important to note if the Association's attorney was present at the meeting. This will protect the Association's attorney-client privilege in any minutes taken during the meeting that are subject to the privilege.

Timing elements should also be stated. The time the meeting is called to order, any Board member who arrives late or leaves early (which will affect any vote taken) and when the meeting is adjourned should be stated.

Preparation

There is no magic to the format of meeting minutes. Every association creates a meeting format that is based upon the types of matters addressed, the order of the meeting, and the level or reporting from officers and committees. Once you understand the structure of your association's meetings, you can prepare to streamline the process of actually taking down the details. Use your agenda as a guide, anticipate the motions that will be made, and the items addressed and create an outline prior to the meeting.

Be Brief and Concise

It takes more thought to reduce a half-hour discussion into a brief statement for the minutes. Extensive debate during a meeting should not be reported; opinions and conclusions of those in attendance should be avoided. The board secretary or minute taker should instead describe what occurred and summarize the details

and conclusions reached.

Keep it simple.

Details of debate during a discussion period on a motion should not be stated in the minutes. The fact that a meeting may take several hours to conduct does not mean that the minutes reflecting the business transacted at that meeting should be equally lengthy. Much of what is discussed during a meeting or that which delays the progress of the meeting is not official business transacted at the meeting and should not be reflected in an official record of that meeting.

On the other hand, background information on the subject of the motion that is brought before the board can be generally stated. The motion itself is recorded verbatim in the minutes.

Remember, minutes should be brief yet accurate to reflect the proceedings of the meeting. This requires more attention and skill than just simply writing down everything that is said.

Conduct of the Meeting

It is easier to document a well-structured and organized meeting. If the meeting is run with a clear agenda and proper procedure, the minutes should flow accordingly. An agenda must be prepared and distributed before the meeting. The President (or whoever is presiding over the meeting) should follow the agenda specifically. It is also helpful if time estimates are listed next to the agenda items so that the meeting can proceed timely, and the Board will not get sidetracked on particular issues. Motions made and seconded for voting should be repeated clearly so that all in attendance (particularly those who need to vote on the matter) have heard and understand the motion. Reporting specific discussion about a particular motion is unnecessary. Instead, the motion itself and who made and seconded the motion should be stated. Any significant amendment to the motion or points made about the motion can be stated. Also, the vote taken, and result obtained should be stated.

"Minute Mastery 2.0: Making An Accurate Record...": continued on page 4.



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It is not necessary to list how each director voted.

Member Comments are Not Official Business.

Civil Code mandates that members be provided an opportunity to comment at every board and association meeting. The board has discretion as to where to place the member comment period on the meeting agenda and may depend on what is on the agenda for a given meeting. However, member comments are not issues on the agenda and should not be recorded in the minutes. Member

comments are not decisions made; they are not actions taken at the meeting and do not belong in the official record of that meeting.

Motions

A word about motions is appropriate. Agenda items should not be open for discussion until there is a motion and a second. All too often, a board will launch into a discussion about an item on the agenda before a motion on that item is made. Issues that require a motion during a meeting should be placed on the agenda, but a motion must be made and seconded before any discussion takes place. When discussion is concluded, a vote is required. Once a motion is pending, no other motion can be made until the vote is taken on the pending motion; however, a motion to table a matter (put it on hold for a later date) takes precedence over the pending motion. Also, a motion to amend or reword a pending motion made must be determined before the final vote taken on the that motion.

Objectivity Of The Minute Taker Is Essential

The secretary or other person taking minutes must be objective. They must not express personal opinion, criticism, or praise on anything recorded. Personal notes of the minute taker are not included in the minutes. Notes should be destroyed following approval of the minutes of that meeting. If any particular board member wishes more detail, he or she can take their own notes so that they can remember what took place. These notes constitute personal records of the board member and are not official records of the meeting of the Board.

Transcription And Approval

Minutes should be prepared or transcribed as soon as possible after the meeting. The longer one waits to transcribe minutes, the less accurate they tend to be. Many communities initially record minutes electronically to assure the approved minutes accurately document the decisions made during the meeting. These recordings are not the official association minutes and

should be erased once the draft minutes are prepared, and the final minutes approved. If recording, it is a good idea to disclose to those in attendance that the meeting is being recorded for the purpose of preparing the official minutes and reassure them that the recording will be erased.



Speaking of technology, in the era of virtual meetings, there are many programs and on-line services available to assist in recording minutes. Artificial intelligence (AI) tools can automate the process of taking meeting minutes by recording, transcribing, and summarizing calls. This can save time and effort and improve productivity. Many AI-enabled meeting note-taking tools have the capability to differentiate between multiple speakers. These tools use advanced algorithms and voice recognition technology to identify and label speakers based on their unique speech patterns and vocal characteristics. As with all AI technology, use it only as a tool to assist in creating an accurate record of the meeting.

Minutes should be approved at the next regular board meeting. Once approved, they should be signed by the board secretary and thereafter become the official record of the meeting.

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How To MAXIMIZE Your Association's Service Providers

By Roman Esparza, CCAM



Boards can often be at odds with their community association's vendors. Challenging issues are often a result of poor communication and unrealistic expectations. Also there can be a lack of follow-through with either the service provider, the management company or even the board. To get the most out of your HOA's service providers, here are some tips your board of directors can use when dealing with some of the most important assets of your community:

- **Make sure you are always working with licensed and insured vendors and contractors.** In California, there are more than 43 different types of contractor's licenses required for businesses performing work over \$500.00. Contractors must have the proper type of license required for the work or trade in which they are doing business. For instance, a roofing company must have a C39 license to do any roofing work in California; a landscape company must have a C27 license. Did you know there is a separate license specifically required for tree trimming (D49) and pool & spa maintenance (D35)? To avoid problems, be sure your service providers are licensed for the specific work in which they're doing business. The properly licensed contractor should be considered an expert in his/her field, and therefore his/her thoughts and opinions should be regarded with more trust and consideration than one who is unlicensed or improperly licensed. Of course, you need to keep in mind that the properly licensed contractor may "not" be the lowest bidder when pricing work. Be prepared to pay a little more for work done by a properly licensed and insured contractor. It is also important to make sure your licensed contractor maintains a General Liability Policy of at least 1 million in loss coverage, and if they have employees or utilize day laborers, they must have a Workers

Compensation policy.

- **Build a strong working relationship with your service providers.** Boards can get more out of their vendors when there is a relationship in place with the actual person providing the service to your community. These service providers need leadership and guidance. While, they know how to perform their job, they still need your thoughts and direction about how these things are being done in order to better understand the quality of service expected. Meeting with and communicating with your service provider is usually much easier than making a change in vendors or receiving lesser quality service and performance.

- **Have only ONE designated person as the liaison to your vendors to communicate with the service provider and answer questions on behalf of the Board.** Often the service provider may be told different things by different people within the community, which leads to poor service, long delays and bitter feelings by those whose instructions and expectations are not being met. It's usually a good idea to have your manager be that lead person. In some cases, however, it may work out better and be more time-efficient if the primary liaison is an on-site board member or a committee person designated by the Board to give instructions to the service provider on behalf of the board and the HOA.

- **Always be straight-forward and clear with your service providers.** Tell them when they are doing a great job. They will appreciate your compliments and will continue to do their best to keep your trust and confidence in their work. Whenever their services are not meeting the Board's expectations, explain it to them as soon as possible. Don't wait until a small issue turns into a big issue, before communicating to your vendor that their services may be falling short of their duties and expectations. They will appreciate your input and if they are a good vendor they will continue to meet your needs and expectations.

- **Finally, after the services have been provided, be sure to pay your vendors promptly and on time.** Payment for services is usually expected upon completion of work. But some contractors will allow up to (10) days for payment to be made after services have been provided. Your prompt payments will help to keep your vendor's business running as smoothly, and this in turn will help them to maintain their quality customer service for your community.

Overall, Boards should always try to work with only qualified service providers who they know and trust. Making sure your vendors fully understand the level of quality service that is expected from them by the HOA and its board before they start any work to avoid problems later on. Encourage your service providers to be proactive and let the board know of any potential problems before they happen. Also, ask them to assist the Board with any long-range planning necessary for your community such as future problems that can be anticipated.

Good communication and instructions between the community manager or Board liaison and the vendors will help keep the level of service to your community as high as possible and will make the Board look even greater to their members.

Roman Esparza is a CCAM and Broker Associate at Beven & Brock Property Management in Pasadena. He is a member of CAI and CACM and been managing homeowner's associations for more than 20 years. He can be reached at roman@bevenandbrock.com ❖

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Communicating Reserve Study Results To Homeowners

By Robert M. Nordlund, PE, RS



Board members and managers sometimes ask us how to effectively communicate the results of their Reserve Study to homeowners, or how to “sell” the value of a Reserve Study to their homeowner members. We’ve spent decades focusing on preparing Reserve Studies for our clients, but appreciate now that boards and managers often need some help to “cross the finish line” and effectively deliver these results to their homeowners. So please see the template “open letter” we’ve created for you below. Copy it, edit it, and use it effectively at your association! It’s just part of our desire to help “improve your future”!

As a board member, our fiduciary duty is to protect, maintain, and enhance the value of our property. This requires we responsibly care for our physical and financial assets. To accomplish this, we commissioned a Reserve Study, which identifies the current condition of our physical assets and recommends a multi-year Funding

Plan to prepare financially for our upcoming repair and replacement projects. Since the physical condition of our association and our financial resources are in a continual state of change, we expect to follow national Best Practice by having our Reserve Study updated at least every third year.



A Reserve Study is a budget planning tool that identifies three things:

- the predictable and major repair or replacement projects a community association is responsible to accomplish,
- the status of the reserve fund,
- a stable and equitable funding plan to provide the financial resources to accomplish these anticipated projects in a timely manner.

Deterioration of our common area assets is unavoidable and expensive, but fortunately it is very predictable. Ongoing Reserve funding “pays the bill” of this ongoing deterioration and is as real as any other bill we are responsible to pay. Thus we transfer the recommended portion of assessment income to the reserve fund each month. Ignoring this obligation unfairly shifts this predictable financial burden onto future owners who did not enjoy the full use of these common area assets. Note that Reserve funding does not create a savings account “for a rainy day”. These funds are set aside for specific projects.

Reserve Components are chosen based on national standards which require that the useful life and remaining useful life can be reasonably predicted and the

cost can be reasonably estimated. Components usually include infrequent major projects like roof replacement, major painting projects, elevator modernization, roadway care, etc. that are too large to be absorbed within our annual Operating Budget.

The Reserve Study suggests a schedule for repair or replacement of the identified components. This schedule guides our spending and helps us make sure funds are available when needed, keeping our property in the best possible condition. We use the “Cash Flow Method” of Reserve Funding, which gives our Reserve Study provider the greatest flexibility to craft a multi-yr Funding Plan that is smooth, stable, and equitable for our owners.

The result for owners is that the need for special assessments is virtually eliminated, because everyone pays their fair share of the cost of ongoing deterioration each month during their years of ownership. Because funds are available when needed, owners will enjoy a great looking property throughout their entire time of ownership. And when the time comes to sell, owners should recoup the funds they have transferred to Reserves over the years because a strong Reserve Fund leads to maximized home values.

Robert Nordlund, PE, RS is the Founder and President of Association Reserves. He is widely considered one of the foremost experts on Reserve Studies and reserve related issues nationally. Robert can be reached through the website: www.reservestudy.com

Robert Nordlund has recently launched an excellent weekly, 30-minute podcast designed to encourage and equip the two million board members across the country who carry the entire community association industry on their backs. You can access the podcast at HOA Insights: www.hoainsights.org/ Or search **Youtube** site for - **Common Sense for Common Areas** at YouTube channel. ❖



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MID YEAR 2024 Legislative Update

Assembly Bill 2159 (Maienschein). Electronic Voting

AB 2159 is CAI-CLAC's effort to help California law catch up with technology and bring electronic voting to community association elections. Currently, 27 states allow for electronic community association voting.

From its inception, this bill was an example of persistence and compromise. Previously attempted a decade ago, in its current form, AB 2159 seeks to enable community associations to conduct director elections, governing document votes, and the uncommon Civil Code 4600 approval for the exclusive use of common area transfers, electronically. The proposed legislation excludes special assessment votes from electronic voting.

Understandably, this bill requires amendments to several existing elections Civil Code sections that were adopted with only written ballot elections in mind. Sections to be amended by AB 2159 include Civil Code sections 5105, 5110, 5115, 5120, 5125, 5200, and 5260.

Among the most important aspects of AB 2159 is that it does not require membership approval for electronic voting. Instead, AB 2159 adds subsection (i) to Civil Code Section 5105 permitting an association to adopt election rules to allow for an inspector of elections to conduct elections electronically. The bill does allow a member to opt out of electronic voting and vote by traditional written ballot. To ensure transparency, the bill imposes additional notice requirements with instructions for

voting electronically, the process for opting out of electronic voting, and key deadlines leading up to the vote.

AB 2159 also seeks to amend Civil Code 5110 to include electronic



voting among an election inspector's duties and specific responsibilities. Civil Code Section 5110 would also be amended to include specific notice requirements to be sent to the members 30 at least 30 days before the ballots are distributed.

Like most new laws impacting our community associations, there will be a learning curve to the electronic voting process. Updates include adopting new electronic voting rules, providing notices specific to electronic voting, and handling a two-track voting process for communities with members who prefer to vote by written ballot. But

in the end, allowing associations to vote electronically should improve voter turn-out, increase the likelihood of achieving quorum, and perhaps save a few trees along the way.

Many thanks to the HOA law firm of Richardson Ober for this legal update. Additional updates are available here: www.roattorneys.com/blog/2024-mid-session-legislative-update

The California Legislative Action Committee (CLAC) which is a part of the Community Associations Institute (CAI) is actively at work year round on legislative issues that impact common-interest-developments. Our lobbyist and his team are engaged in contacting legislators for the benefit of every CID owner in California. A very modest donation of a "buck a door" in your 2025 budget would go a long ways toward helping in their work. Check them out at www.caiclac.com/donate/ ❖



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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.

The newsletter is distributed quarterly during the first week of each quarter. If you do not receive it, and you have received it in the past, please let us know at HOANewsletter@bevenandbrock.com. We do not remove names unless requested.

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

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



BEVEN & BROCK NEWS & VIEWS for Homeowner Associations

HOA BOARD MEMBER EDUCATION

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

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

UPCOMING DATES:

October 29, 2024

www.bevenandbrock.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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