

# Channels of Communication

*Serving Ventura, Santa Barbara, San Luis Obispo, and Kern Counties*

**SECOND QUARTER 2023**

The Official Publication of  
CHANNEL ISLANDS CHAPTER  
**community**  
ASSOCIATIONS INSTITUTE

## Ready or Not,

Here Comes

## Budget Season!



### IN THIS ISSUE...

Budget Season...  
Where to Begin

Inflation & Your  
Reserve Study

5 Ways To Maximize Your  
HOA Landscaping Budget

Deferred Maintenance,  
Choose Wisely!



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Serving Ventura, Santa Barbara, San Luis Obispo and Kern Counties

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# president's message



**Ryan Gesell, CIRMS, CMCA**  
Cline Agency Insurance Brokers, Inc.



Dear Members:

“Spring” Cleaning!

Ahhhhh, Spring Cleaning! The time of year when those that have them can let their inner “OCD Demons” out to play. Time to clean up our Budgets. Clean up our Landscaping. Clean up our Reserves, clean out our closets, maybe even clean up our acts. Time to purge all of that junk that we no longer need and set ourselves up for a successful rest of the year. But Ryan, you say, it’s summer already. Not spring.

To that I say...No. I reject that premise. I feel like we’ve had one season since last December. The Overcast Season. The season of Dreary Weather. So, I’m bringing back Spring in my mind. Because everyone loves spring. It’s not too hot yet, it’s green and pretty outside, and there’s sunshine! Well, in my mind there is. And that sunshine is illuminating the fact that my mind is not spotless. There is plenty of tidying up to do. Much like our communities.

It’s not always obvious what work we need to do in our communities to tidy up. Sometimes, when you see the detritus or decay in your house or community day in and day out, you get accustomed to it. It no longer looks disheveled, it looks normal. Your eyes have gotten used to it and your brain just accepts that what you’re seeing is fine. That’s why it’s important to snap yourself out of it at least once a year. To look at your community, your home, your business, your life, with fresh eyes and finally take those actions that you’ve been putting off.

One advantage of Spring Cleaning in the summer, is that it stays light out WAY longer, so we have a lot more time to get things done. And so do your vendors! The time to get those projects done is now. No more procrastination. They say that the hardest step on any journey is the first step. That first initial move. That first phone call to get a quote for that work you need done. That first meeting. But once we have the ball rolling, things get so much easier. Something about objects in motion are staying in motion.

So if you do nothing else this week, challenge yourself to take the first step on at least one project you have. Even if that first step is just identifying which projects you have that need to get done. Here’s to the Spring in our minds! And the attitude of Spring Cleaning we can use as a starting point, the first step, on our way to building better communities.

Sincerely,

Ryan Gesell  
CAI-Channel Islands Chapter President

**Effective budgets  
require a collaborative,  
proactive effort between  
community managers and  
the board of directors.**

**By Chelsi Rueter, CCAM, CMCA, AMS, PCAM**  
*Community Property Management*

I don't know how it happened, but we blinked and the year is half over! Now is the time when associations find themselves gearing up for budget season – a critical process that sets the financial course for the coming year. Effective budgets require a collaborative, proactive effort between community managers and the board of directors. Here are some steps to guide you through the daunting process of budgeting:

### **Start with a Reserve Study**

A reserve study is a legally required report that identifies the association's assets and creates a funding plan to ensure the components are maintained and replaced as it becomes necessary. These reports are typically prepared by professional reserve study companies that inspect and catalog each asset. The report will document the condition of the component as well as establish the remaining useful life and cost of future maintenance or replacement. The study will set forth how much should be contributed to the reserve account each month, thus creating the backbone of the budget.

In order to properly forecast a budget, I recommend having a new reserve study prepared each year. One year will include a site visit, as required by law, and the next two years will be a financial update only. A good reserve study can be used as a very useful financial and planning tool throughout the fiscal year.

### **Goal Setting**

Budget time is an excellent opportunity for the community manager and board of directors to come together and discuss the strategic objectives for the association in the coming year. It is important that the goals are reasonable and attainable. Often times in community management, less is more. Trying to jam too many projects into one year can result in chaos and be overwhelming. Start by looking at your reserve study to see what projects are slated in the coming year and then prioritize them by necessity.

### **Anticipating Expenditures**

A well-funded association relies on a board of directors that understands the importance of forecasting upcoming expenditures and anticipates rising costs. By examining historical expenses and identifying areas where costs are increasing (i.e. utilities, insurance, and professional services), managers and boards can develop accurate financial projections.

Communities don't get cheaper as they get older. It's important to identify areas where maintenance and repairs may be necessary, even if they haven't caused problems before. Some of the most common problems we see as communities age are plumbing leaks, lifted or deteriorating concrete, waterproofing failure, and irrigation and backflow leaks, among other things.







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## Uphold Fiduciary Responsibilities

Boards bear a fiduciary responsibility to act in the best interest of the association. Creating budgets should not be solely driven by a desire to keep assessments low, but rather to ensure the long-term financial health of the corporation. The focus should always be on making decisions that support the association's overall well-being, even if it means increasing assessments. Financially healthy associations typically raise assessments a small percent each year.

It is important to budget in accordance with the funding plan provided in the reserve study. When boards choose to fund the reserves at a rate less than what is recommended, necessary maintenance becomes deferred and repairs become reactionary. A "kick the can down the road" approach may keep assessments low but will ultimately lead to financial ruin and/or special assessments later on.

## Be Specific

A well-defined budget makes it easier to track how money is being spent throughout the year. Instead of budgeting for generic topics like "Repair and Maintenance", break the categories down into more specific subjects, such as "Concrete Repairs", "Lighting", and "Fence Repairs", to name a few.

Effective budget planning is crucial for the financial health of associations. By being prepared for budget season and not putting their heads in the sand when it comes to difficult financial realities, boards will set their associations up for success. Financially healthy communities are well maintained communities. Well maintained communities lead to increased property values and happy homeowners! 

**Chelsi Rueter, CCAM, CMCA, AMS, PCAM** is the Chief Operating Officer at Community Property Management. She holds the highest designation in the industry, a PCAM. She is a past chapter president and currently serves on the chapter's board of directors and is the programs committee co-chair. Chelsi can be reached at [chelsi@cpm1.com](mailto:chelsi@cpm1.com).





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# Inflation sucks... fight back with your Reserve Study!!!

By Les Weinberg, RS, MBA



That evil “INFLATION MONSTER” is back again, and its sibling “RECESSION” is predicted to follow in the not too distant future...ugghhh!

For those of us that have been around for a while, it's a familiar scene – we WILL survive, but how do we manage it in the meantime?

There are several techniques that can be utilized with respect to your Reserve Study which can help alleviate the pain. Read on to discover how your association can put them to work.

## Borrowing From Reserves

Borrowing IS permitted (**interest free!**) per California Civil Code (CCC) section 5515, which allows a board to transfer money from the reserve fund to the operating fund to meet short-term cash flow requirements. Although the funds must be repaid within a year, there is no limit on the dollar amount – as long as the following procedure is employed:

- Provide notice of the intent to borrow in a board meeting.
- Record the details in board minutes, including the reasons for the transfer as well as how & when it will be repaid.

## Laddering Investments

Interest rates are currently not only high on the lending side, but on the investment side as well! Certificates of Deposit (CD's) are paying above 4%, are FDIC insured (up to \$250,000 per institution), and can be typically locked in for 6 months to 5 years.

- Laddering entails investing funds at intervals – e.g., initially invest \$10,000, 1 or months later invest another \$10,000, and so on. The maturities can be established in conjunction with the timing of reserve expenditures as scheduled in the Reserve Study.
- Money market rates have been as low as .01%, yielding as low as \$10 per year on \$100,000, versus a 4% CD compounded daily, yielding approximately \$4,000 per year.



## Component Replacements with Lower Lifecycle Costs

Many components, such as roofing, siding, HVAC equipment, etc. are regularly being re-engineered to higher standards, resulting in longer life expectancies than that of the existing components. Even if the replacement component is more expensive than what the existing component would have cost, the annual cost (i.e., depreciation) is often less when the typical useful life increases. This results in the need for lower contributions to the reserve fund.

- \$10,000 component cost with a 10 year life = \$1,000/year depreciation
- \$12,000 component cost with a 15 year life = \$800/year depreciation

## Advanced Warning for Component Replacements

Most Reserve Studies provide a schedule of components anticipated to need replacement in the next 0, 1, and 2 years. Not only is this information useful from a cash flow standpoint, but it will allow for the timely obtaining of proposals for replacement...serving to avoid needing to take the "quickest" which is often more expensive.

In order for the above techniques to be effective, it's critical to ensure that Reserve Study basics are being followed:

## Current Reserve Study

The Reserve Study must be current. Remember, after the initial Reserve Study is done, **annual updates** are required to be done per the CCC – with every 3rd year including a site visit and each year in between only necessitating a financial update.

## Distribute within the Deadline

The Reserve Study summary and the accompanying Assessment and Reserve Funding Summary (ARFDS) must be distributed within 30 to 90 days from the **beginning of the year** the study is for. For example, if the Reserve Study is for the 2024 calendar year, these documents must be distributed to the homeowners as early as September 30, 2023, but no later than December 2, 2023.

**Some Good News:** the predictions are that the measures to tame the current high level of inflation are having a positive effect, and that if a Recession does result then it should be somewhat mild and short lived. In the meantime, the advice noted above should help weather the storm! 🏠



**Les Weinberg, RS®, MBA**, is the co-founder and Chief Financial Officer of Reserve Studies Incorporated, A full service Reserve Study provider to homeowners associations since 1991. He can be reached at [les@reservestudiesinc.com](mailto:les@reservestudiesinc.com).

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*A board member recently asked what defines “too far” with respect to choosing to do a reserve project on time or to defer the project. In other words, when do deferred repairs get to the point of the board dangerously incurring liability and financial risk?*

### Deferred Maintenance: A Board’s Decision

The above is an interesting question, as it reveals the true nature of being a board member with the authority and power to make decisions on behalf of the association. The homeowners have entrusted the care of the common area assets to the board members and the board is in charge, within the limits granted to them by the association’s governing documents. But what should guide the decision-making process and when do “good intentions” lead to potential liability?

### Deferred Maintenance Decisions in Practice

To help address these concerns, let’s look at some actual reserve projects:

Consider a board that is trying to decide whether to replace (or defer the replacement of) a pool heater that has reached the end of its Remaining Useful Life (RUL). One of the first considerations should be what the possible consequences are of a component failure.

For most associations, it would be of no consequence if the pool heater suddenly failed. At worst, the pool would cool down for a few days until the replacement heater was installed; leaving you with a few disgruntled swimmers, but nothing that was a significant issue.

However, deciding whether to repair or replace a failing boiler (with an RUL of zero years on the Reserve Study) that provides hot water to the entire building is an entirely different matter. If the boiler failed suddenly, and everyone in the building had to survive without hot water for a few days, there are going to be some very unhappy homeowners.

So the first question for a board to ask themselves when faced with the option of deferring maintenance is, “What happens when that happens?” A board certainly has more flexibility deferring the repair or replacement of reserve component items where catastrophic component failure would be of little consequence.

### Deferred Maintenance and the Business Judgement Rule

Presuming the component failure would have significant consequences for the association, there is a lesser-known, but vitally important corporate principle for a board to consider when evaluating the wisdom of their decisions. This principle is called the Business Judgment Rule (BJR).

The BJR is intended to protect corporate directors from decision-making liability when their decisions are challenged. In order for a board’s challenged decision to be protected, a judge or jury would need to be convinced that the decision made was:

- As an act of good faith (within the authority and power of the board)
- Acting in the best interests of the association
- Made with due diligence (based on reasonable inquiry)

### An Example of Deferred Maintenance: Waiting to Replace a Roof

Let’s see how this works with a common deferred maintenance issue – replacing a roof.

Consider a Reserve Study for a condominium association that indicates the roof will soon need to be replaced (with a RUL of 1 year). When a single homeowner experiences a roof leak, the board contracts with a reputable roofing contractor to make the necessary repairs. At the next board meeting, the issue is raised as to whether it’s time to go ahead and replace the entire roof.

# Deferred Maintenance, CHOOSE WISELY!

By Sean Kargari, RS, Association Reserves, Inc.

Choosing to repair or replace the roof is clearly within the authority and power of most boards and the first necessary element of the BJR. One board member wisely suggests asking the roofing contractor for his opinion. If the roofing contractor's position is that the roof is still in generally fair condition, except for the one unit that needed repairs, the board could decide to wait another year before undertaking an expensive re-roofing project.

The board has complied with the third necessary element of the BJR by making a reasonable inquiry. In this case relying on the expert opinion of a professional roofer. A decision to defer roof replacement while still assuring the leaking upper floor homeowner of a water-tight unit for another year would certainly be in the best interest of the association.

Now, consider the circumstance where the result of the board's reasonable inquiry with the contractor is that complete roof failure is imminent – where it was hard for the roofing contractor to tell which area of the roof to fix because it all looked equally bad. What are the implications of the BJR if the board were to decide to defer roof replacement for another year or two?

Again, the decision is certainly within the board's authority and power. But if the board ignores the facts and wise counsel that they've gathered, or worse yet, fails to make a reasonable inquiry, the decision would fail to comply with the second necessary element of the BJR.

If the board's decision to defer roof replacement was motivated in part by board members who couldn't personally afford the necessary special assessment or were planning to sell their units before the word got out that the roof was in bad shape, or didn't want the inconvenience of coordinating a roof replacement project that year, the board's decision could be deemed self-serving. This would mean they failed to comply with the second element of the BJR- making decisions in the best interests of the association.

Yes, boards have the authority and power to make decisions, but no board member wants to stretch their authority and power to the point that it gets them into trouble. The BJR offers a simple but powerful three-part test that can be used to guide important board decisions. Every day, well-intentioned board members step outside the protection of the BJR by making decisions "without reasonable inquiry", or that are "self-serving", leaving them needlessly exposed to the risk of personal liability.

When a board is trying to decide between two or more options, it would be wise to ask the right questions of the right people, abide by professional opinions, and act strictly in the best interests of the association. That is a decision-making process that will keep well-intentioned boards out of trouble. ⬆

**Sean Kargari, RS** joined Association Reserves, Inc. in 2003 and has since completed over 1,800 Reserve Studies for a wide range of properties including condominiums, luxury timeshare resorts, high-rises, schools, libraries, public municipal facilities, and religious facilities. For his expertise, he earned the Community Association Institute's (CAI) Reserve Specialist (RS) designation and has the distinction of being RS #115. He also maintains a NV Reserve Study Specialist designation. Sean can be reached at [skargari@reservestudy.com](mailto:skargari@reservestudy.com).





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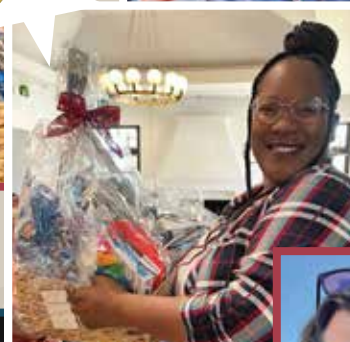
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# 5 WAYS TO MAXIMIZE YOUR HOA LANDSCAPING BUDGET

**By BrightView  
Landscape Services**

As an HOA board member or community manager, you are responsible for managing budgets, and landscaping is typically one of the larger line items.

Your community's landscape creates more than just a pretty picture. It establishes the tone and backdrop for your community. When done well, landscaping can increase homeowners' property values by up to 7-14%. As an HOA board member or community manager, you are ultimately responsible for maintaining the look and feel of your community. You have the important task of managing your homeowners' money while preserving the property's overall integrity.

Here are 5 ways you can maximize your landscaping budget.

## 1 **Design Your Environment – Choose the Right Plantings**

Plant selection plays a significant role in cost management. It is essential to consider:

- The initial cost and return on investment.
- The plant's ability to survive in your local environment.
- Ongoing maintenance.

Estimate the true costs by calculating the total cost of ownership over an extended period. A design team with extensive experience and training in your area is an invaluable resource when calculating the long-term implications for landscaping costs. Their knowledge will help you maximize the life of your plantings.

Professional landscape designers understand what works best in your locale and will help you choose resilient plants

and place them on the property where they can thrive. Incorporating native plants, perennials, and evergreens into your design will bring visual appeal to your property with plant material that will live longer and minimizing the need for plant replacements.

Your design team may also recommend incorporating points of interest and gathering spots throughout your community to utilize larger areas. Examples include a playground or a sensory garden with butterfly bushes and a gazebo. The addition of these areas can reduce maintenance costs by incorporating artificial or natural hardscapes.

## 2 **Do the Job Right the First Time**

### **INITIAL INSTALLATION**

The initial installation is a complex project with multiple variables, including design, clearing land, grading, laying irrigation systems, building focus features, the first planting, and ground cover additions.

Failure at the early stages significantly impacts your landscaping investment's effectiveness, which may not become apparent until a full year of seasons are completed and possibly beyond. Rework in any of these areas can be highly disruptive and expensive.

### **ONGOING MAINTENANCE**

Failure to complete mowing, weeding, trimming, agronomic applications, and cleaning up after a weather event has aesthetic and cost implications. Dissatisfied residents may request follow-up, causing further management and oversight to complete maintenance tasks.





#### LANDSCAPING TEAM AND ACCOUNT MANAGEMENT

You and your commercial landscape partner must be unified. After all, you've spent time and energy designing a community your homeowners call home. You've made a

financial commitment on their behalf. Now to ensure the job is done right the first time.

Start with an implementation plan with clear expectations. Include an outline of the critical milestones, completion dates, goals, performance metrics, and the key players. A landscaping partner can get the job done right the first time, provided they bring the right team, including:

- A dedicated account manager to oversee the project and be a single point of contact for the HOA.
- A crew supervisor to oversee the daily work.
- A well-trained and qualified crew to correctly implement the agreed programs. Completing the job right the first time will keep you on budget. Unexpected delays due to poor planning or account management will cause you to overspend and put you in the hot seat with homeowners.

# 3

#### Protect Your Investment

#### PROTECTING TREES—YOUR MOST VALUABLE LANDSCAPING ASSET

Incorrect maintenance of trees—typically one of the most valuable landscaping assets—can be exceptionally costly. Poor or inappropriate pruning or failure to provide the proper nutrients can weaken and ultimately kill a tree. In

*Continued on page 21*

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# CAI-Channel Islands Chapter Luncheon ECONOMIC OUTLOOK

T U E S D A Y  
**August 29, 2023**  
11:15 AM

*Join us for this program as  
our speakers provide an  
economic update and what  
this means for our industry.*

*This educational program has been approved for 1 hour  
of continuing education credit by CAI and CAMICB.*



**Regina Korossy, MBA**  
Edward Jones



**Jeff Beaumont, Esq., CCAL**  
Beaumont Tashjian

## REGISTRATION

**Register at [www.cai-channelislands.org](http://www.cai-channelislands.org)**

Please register by August 25  
Fee (includes lunch)

HOA Board Member, Homeowner or Community Manager:  
\$45 Member | \$55 Non-member  
Business Partners: \$55 Member | \$75 Non-member

Community Associations Institute (CAI) provides education, resources,  
advocacy and networking to the Homeowners Association Industry.

**LOCATION**  
**Los Robles Greens**  
299 S. Moorpark Road, Thousand Oaks

## SPEAKERS

many cases, these errors cause irreparable damage, and it will take years to re-establish a mature tree. Choose a company with Licensed and Certified Arborists.

#### DOCUMENT MAINTENANCE STANDARDS AND COSTS

Once you have selected your landscaping partner, it's time to document maintenance standards. Be specific with your plan covering all the elements it will take to keep your property running efficiently. This will typically include landscape maintenance, fertilization, water management, weed, and pest management, tree care, storm preparedness, and disaster response.

Determine the cost of implementing the program—the right partner will be able to provide you with accurate estimates based on best practices and productivity studies. Schedule regular meetings to ensure the standards you set are being met. These meetings will be an excellent time to discuss areas for improvement.

## 4 Reduce Water Consumption

Routine watering of your plantings is essential for retaining your community's curb appeal and enhancing its value and desirability for your homeowners and residents. Landscape irrigation in the USA is estimated to use 9 billion gallons of water daily, with as much as 50% wasted due to evaporation, wind, and runoff due to inefficient methods and systems. The good news is you can reduce your water costs by up to 20% by implementing a water management program. There are also water conservation rebates that can further offset irrigation improvement costs.

#### IMPLEMENT A WATER MANAGEMENT PROGRAM

A water management program includes water-efficient plants, hardscaping, irrigation system installation or retrofitting, and water reclamation.

Our water management programs include:

- Conducting water usage analysis.
- Landscape designs that incorporate seasonal weather patterns, soil conditions, grading, sun exposure, and plant resiliency and grouping to reduce water usage.
- Xeriscaping designs that utilize elements that need little to no smart irrigation technology to significantly reduce water consumption.
- Predictive weather capabilities and rainfall detection coupled with smart sprinkler controllers prevent overwatering.
- Regular inspections to identify and repair leaks.
- Opportunities to improve in-place irrigation systems with high efficiency nozzles, drip conversions, and pressure regulations.

#### WATER CONSERVATION REBATES

There are over 190 water conservation rebates available across the USA. Your landscape company's water management experts should be tracking these programs and assist with the application process.

## 5 Reduce Administrative Costs

Ultimately you are responsible for retaining the value of the HOAs property, sourcing and managing vendors, contracts, the budget, and homeowner/resident communications. Most of these go unseen by the property owners. But it doesn't make them any less important or time consuming.


#### ONE-STOP-SHOP

Work with a landscape company who can combine multiple services to lower your service costs and overheads this will reduce the number of POs processed, vendor negotiations, and meetings with various points of contact. 📍



**Danita L. Vaughn**  
CMCA, AMS, PCAM

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**BrightView**  *BrightView is an 11-year member and supporter of CAI-Channel Islands Chapter with branches in Ventura, Conejo Valley, and San Fernando Valley. BrightView is here to address the landscape needs of Community Associations and can provide services with short and long-term budgets.*

*You can reach Lisa Santoro, Business Developer at [lisa.santoro@brightview.com](mailto:lisa.santoro@brightview.com) (Conejo Valley/San Fernando Valley) or David Clark, Business Developer – [david.clark@brightview.com](mailto:david.clark@brightview.com) (Ventura County). Brian Benavidez, Market Sales Manager – [brian.benavidez@brightview.com](mailto:brian.benavidez@brightview.com)*



# 2023 MID-SESSION LEGISLATIVE UPDATE:

## Pending California Legislation Addressing Community Associations

The following legislative summary provides an overview of proposed new laws addressing community associations that have made their way through the legislature and may soon make their way to the Governor's desk.

Below outlines the pending bills currently:

### **Assembly Bill 1458 (Ta). Association governance; Member elections, quorum.**

#### **Bill Overview**

Assembly Bill (AB) 1458 would amend Civil Code Section 5115 and Corporations Code Section 7512, providing for a reduced quorum of 20% for purposes of association meetings to elect directors. Over the past few months, AB 1458 has survived efforts to impose burdens on associations in exchange for invoking the reduced quorum process; however, CLAC's consistent efforts appear to have kept the essence of the bill in tack—provide relief for communities seeking to hold annual meetings and elect directors but unable to reach quorum.

#### **The Details**

AB 1458 is a CAI-CLAC supported bill intended to provide much needed relief to community associations that struggle to make quorum necessary to conduct an annual membership meeting and elect directors. The bill would amend Civil Code Section 5115 and Corporations Code Section 7512 to provide a reduced quorum of 20% for an adjourned membership meeting at twenty (20) days after the adjourned meeting date, unless the association's governing documents provide for a lower quorum.

Recent amendments to AB 1458 include required notice to the membership that if the quorum is not reached, a subsequent meeting may be scheduled at least twenty (20) days after the scheduled election *"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."*

The legislation applies only to membership meetings to elect directors. The reduced quorum would not apply in the case of a special membership meeting to remove directors.

The bill is seen as an important measure to facilitate community association governance and allow an association to conduct annual membership meetings and conduct regular director elections.

### **Assembly Bill 1033 (Ting). Accessory dwelling units; Separate conveyance.**

#### **Bill Overview**

AB 1033 would allow a local governing agency (i.e. building and safety or code enforcement) to adopt an ordinance allowing a lot owner to separately convey the primary dwelling and the accessory dwelling unit or units ("ADUs") as condominiums, provided certain burdensome requirements are met.

#### **The Details**

The States legislative's push to increase housing density in California community associations continues. AB 1033 would amend Government Code Section 65852.2. Government Code Section 65852.2 informs the local governmental approval agency what it can and cannot do regarding the approval and regulation of ADUs.

The bill seeks to amend Government Code Section 65852.2 to allow for the separate conveyance of a primary dwelling and the ADU. This amendment would authorize a local agency to adopt a local ordinance allowing the separate conveyance as condominiums. The ordinance must include the following requirements:

- The creation of condominiums pursuant to the Davis Stirling Act.
- The creation in compliance with the Subdivision Map Act.
- That a safety inspection be conducted prior to the recordation of the condominium map.
- That at the time of the sale, all liens shall be satisfied.

The bill requires that each lienholder consent prior to the recording of the condominium map and expressly allows for the lienholder to refuse consent. The bill emphasizes that nothing in Gov. Code Section 65852.26 limits the ability of an accessory dwelling unit to be sold or otherwise conveyed separate from the primary residence pursuant to Section 65852.2.

Needless to say, there are many hoops to jump through with this legislation before it becomes law, if ever, (not the least of which is requiring a municipality to create a condominium plan, and Subdivision Map Act challenges).



**By Matt Ober, Esq., CCAL**

*Richardson / Ober, CAI-CLAC Delegate Emeritus*



There is no question that this bill would have a significant impact on a planned development's operations and its governing documents.

### **Assembly Bill 1101 (Flora). Building standards; Exterior elevated elements.**

#### **Bill Overview**

AB 1101 would amend Civil Code Section 5551 and Health & Safety Code Section 17973 to authorize a Branch 3 company registered with the Structural Pest Control Board and with a minimum of 5 years of experience to conduct the required exterior elevated elements inspection.

#### **The Details**

Likely fueled by the nearing deadline for community associations to complete their exterior elevated elements (aka SB 326) inspections, and the relatively small pool of qualified structural engineers and licensed architects, AB 1101 expands the list of those qualified to conduct SB 326 inspections to include licensed pest control companies. Presently, pest control companies are not authorized to meet an association's obligation to satisfy the requirements of Civil Code 5551 even though they are trained to identify fungus, deterioration, and decay. The bill's author noted that the 2015 balcony collapse in Berkeley California was the result of decayed wooden joists caused by wood dry rot, which a Branch 3 Structural Pest Control Company is trained to detect.

### **Assembly Bill 648 (Valencia/Lowenthal). Meetings solely by Teleconference.**

#### **Bill Overview**

AB 648 would amend Civil Code Section 4090 (board meeting defined) and add Civil Code Section 4926 to permit community associations to conduct board or membership meetings solely by video or teleconference, without a physical location, provided the association meets specified safeguards.

#### **The Details**

The existing definition of teleconference, for purposes of satisfying the "Open Meeting Act," requires an association

to identify a physical location so that members may attend in person and at least one director or designated person to be present at that physical location. The proposed legislation would amend the Civil Code Section 4090 definition of a board meeting to exclude a physical meeting location requirement so long as that board meeting meets the proposed requirements of the new Civil Code Section 4926.

Under this proposed law, the notice for each meeting conducted by telephone or video conference will have to include:

- Clear technical instructions on how to participate by teleconference.
- The telephone number and electronic mail address of a person who can provide technical assistance with the teleconference process, both before and during the meeting.
- A reminder that a member may request individual delivery of meeting notices, with instructions on how to do so.
- That every director and member has the same ability to participate in the meeting that would exist if the meeting were held in a physical location.
- That any vote of the directors must be conducted by roll call vote.
- That any person who is entitled to participate in the meeting shall be given the option of participating by telephone.

Also, any meeting where ballots are counted and tabulated pursuant to Civil Code Section 5120 (secret balloting procedure) could not be held solely by teleconference.

Although in-person meetings play an important role in community building, the virtual meeting has opened up opportunities for many homeowners to attend meetings and participate that otherwise were unable to. Virtual meetings tend to be more productive and efficient, allow more owners to engage in how their community is governed, and tend to allow boards and management to maintain order and keep things civil while proceeding through an agenda more smoothly.

*(Continues on page 22)*

# 2023 MID-SESSION LEGISLATIVE UPDATE:

## Pending California Legislation Addressing Community Associations

### **Assembly Bill 572 (Haney). Assessments; Deed restricted housing.**

#### **Bill Overview**

AB 572 would amend Civil Code Section 5605, which regulates the amount an association can increase regular assessments or levy a special assessment in a given year. Current law permits a maximum regular assessment increase of 20% over the preceding year, or a special assessment of more than 5% of the annual operating budget, without member approval. AB 572 seeks to carve out an exception for “deed-restricted affordable housing units” limiting regular assessment increases to 5% over the preceding year or more than the percentage change in the cost of living, whichever is greater for such housing units. The bill has been amended to apply to community association’s formed on or after January 1, 2024, carving out any associations.

#### **The Details**

The standard method for community association assessments is pro rata, divided equally among all properties in the community, or based on square footage, or a combination of the two. The limit on a community association’s ability to increase regular assessments is 20% over the prior year’s assessment. AB 572 would create an exception for so-called deed-restricted affordable housing units by restricting an association’s ability to increase regular assessments for such units to the greater of 5% over the prior year or the percentage change in the cost of living, not to exceed 10% over the prior year’s regular assessment.

This deed restricted assessment increase limitation would not apply to an association where 30% or more of the units are occupied by, or available at affordable housing cost to, lower or moderate income households.

Perhaps intended to protect low-income homeowners, this law would result in unequal and unfair distribution among the members of a community association’s annual financial obligation. It would require some homeowners to pay a greater percentage of the operating budget to fund the annual operating budget resulting from this deed-restricted assessment limitation. The unintended consequence of this law would be 1) the identification of a class of

affordable housing or low-income owners which could lead to resentment among other owners; or 2) boards limiting assessment increases for all owners to avoid the impact of disproportionate assessments resulting in artificially low budgets, and/or deferred maintenance or ignored repair obligations. Further, artificially low assessments could eventually require multiple special assessments to fund annual budget shortfalls.

### **OTHER BILLS TO KEEP ON YOUR RADAR**

### **SB 71 (Umberg). Small claims/superior court limits increased for individuals.**

#### **Bill Overview**

SB 71 seeks to increase from \$10,000 to \$12,500 the amount an individual can sue for in small claims court. It also seeks to increase to \$35,000 the maximum amount in dispute for what is referred to as a limited superior court civil action. Limited Civil Courts currently hear cases up to \$25,000. SB 71 will not increase the amount a corporate entity can sue in small claims court, which currently is \$5,000.

#### **The Details**

While the goal of any community association should be to resolve conflict and avoid litigation, there are occasions when a judge is needed to decide a legal issue. Civil matters in California courts are broken up into three separate tiers, the lower 2 being limited civil and small claims. Currently, an individual can pursue a claim against an association up to \$10,000 whereas the association is limited to \$5,000. Small claims court has long been viewed as a means for parties to quickly and inexpensively bring their disputes to court and many individual homeowners have availed themselves of the small claims option. For an association, however, the relatively low \$5,000 jurisdictional limit is often a deterrent to bringing a small claims action. This bill would widen this “gap” between what an association and an owner can sue for, perhaps leading to more small claims actions by owners against their associations. Increasing the claim amount for individuals is also likely to increase the number of small claims filings in general, which in the end may slow the wheels of justice.





## **AB 1572 (Friedman). Potable water; Nonfunctional turf.**

### **Bill Overview**

This bill would prohibit the use of potable water (water fit for human consumption) on what is defined as nonfunctional turf on all homeowners associations and common interest developments beginning January 1, 2029.

### **The Details**

Despite record rainfall this past season, AB 1572 reminds us of the concerns about California drought conditions and the availability of water to meet the needs of a growing population. AB 1572 would prohibit using water suitable for human consumption to irrigate our grass-covered parkways, open spaces, and lawns, areas referred to as “nonfunctional turf.” “Nonfunctional turf” means any turf that is not located in areas designated by a property owner or a government agency for recreational use or public assembly. The law would carve out the use of potable water to the extent necessary to ensure the health of trees and other perennial non-turf plantings, or to the extent necessary to address an immediate health and safety need.

The bill also includes certification requirements to ensure that a community association is in compliance or faces civil penalties.

If AB 1572 becomes law, communities with large turf-covered open spaces or common areas will need to consider identifying the use of such areas as recreational or otherwise, in order to justify continued irrigation with potable water. Alternatively, those communities with the financial resources or ability to specially assess could consider the use of reclaimed water in order to maintain these turf areas.

## **SB 402 (Wahab). Discrimination; Caste.**

### **Bill Overview**

This bill seeks to amend Civil Code Section 51 (the Unruh Civil Rights Act) and the Fair Employment and Housing Act (“FEHA”) to add caste as a specifically designated protected class, and define “ancestry” to include caste, among other things, thereby prohibit discrimination based on caste.

### **The Details**

California prohibits discrimination on the basis of race, ethnicity, color, national origin, ancestry, and a number of other characteristics that have no bearing on a person’s character or individual merit. On occasion the state determines there is a need to expand or clarify its anti-discrimination laws, most recently doing so to address gender identity and expression. This bill seeks to add “caste” as an expressly prohibited basis for discrimination under FEHA and the Unruh Civil Rights Act, in response to increasing reports that caste-based discrimination in housing, businesses, and schools.

### **Stay In Touch with Sacramento through CLAC**

As the proposed laws continue to wind their way through the state legislature and ultimately to the Governor’s desk, get the latest developments on these bills including any amendments. Sign up at [www.caiclac.com](http://www.caiclac.com). Please consider supporting CLAC’s efforts through its Buck-A-Door (or more) campaign. [👉](#)

**Matt D. Ober, Esq.** is a partner of Richardson Ober, LLP, where his practice is dedicated to the exclusive representation of community associations throughout California. Matt has served as counsel to community associations for over three decades and has made significant contributions to the industry through both CAI and CACM. Matt is an Emeritus Delegate to CAI’s California Legislative Action Committee (CLAC) and served as Legislative Co-chair of CLAC’s Executive Committee. Matt can be reached at [matt@roattorneys.com](mailto:matt@roattorneys.com).





# Welcome

to our new members!

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## 2023 CHAPTER EVENTS

### August

- 10 Chapter Webinar, 11 am, Zoom
- 29 Chapter Luncheon, 11:15 am, Los Robles Greens, Thousand Oaks

### September

- 7 CLAC Bingo & Brews, M on High Restaurant, Moorpark
- 21 Central Coast Luncheon, 11:30 am, Ventana Grill, Pismo Beach
- 19&26 Board Leadership Webinar Series (Sessions 1 & 2), 10 am, Zoom
- 28 Santa Barbara Luncheon, 11:30 am, Mar Monte Hotel, Santa Barbara

### October

- 3 Board Leadership Webinar Series (Session 3), 10 am, Zoom
- 5 Community Faire, 3:30 pm, Hyatt Regency Westlake
- 24 Chapter Luncheon, 11:15 am, Los Robles Greens, Thousand Oaks

### November

- 9 Central Coast Luncheon, 11:30 am, Ventana Grill, Pismo Beach
- 16 Chapter Luncheon, 11:15 am, Spanish Hills Club, Camarillo
- 30 Holiday Happy Hour, 5-7 pm, Westlake Village Inn

### December

- 14 Chapter Luncheon, 11:15 am, Spanish Hills Club, Camarillo

For more information & to register,  
visit [www.cai-channelislands.org](http://www.cai-channelislands.org)



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Service Category: HOA Management Company

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Araceli Collazo, Concord Consulting & Association Services  
Britta Kaltman, Leisure Village Association  
Justin Neal, Community Property Management  
Katie Papa, PMP Management  
Jennifer Simonish, Seabreeze Management Company, Inc.  
Doug Yeargain, Academe Real Estate & Property Mgmt.  
Joy Zucker, HOA Organizers

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Marlborough Townhomes • Riverview Ventura  
Sedona Maintenance Corporation • Vista Del Monte

## Community Association Individual Homeowner Members

David Kallian, HarborWalk Owners Association  
Brian Trushinski, Oak Park Village

## Thank you

*to the following members for renewing your membership with CAI!*

### **Community Association Volunteer Leaders**

Ruth Blystone • Ken Cruze  
Gary F. Davis, Casa San Carlos Homeowners Association  
Edith Garfinkle, Mission Verde Community Association  
Linda Kaplan, Anacapa View Homes  
Patricia Lacy, Park Lanes Townhomes  
Ruthellen Martinez, Solera at Kern Canyon  
Randy Stokes, Surfside III Condominium Owners Association  
Beverly Vandermeulen, Leisure Village Association

### **Community Association Boards of Directors**

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Beachgrove Owners Association  
Beachport Cottages Homeowners Association  
Casitas Village Homeowners Association  
Country Lane Community Association  
Encina Royale • Hancock Village  
HarborWalk Homeowners Association  
Hollywood Beach Seaside Owners Association  
Mayfield Village Community Association  
Mt. Meadows Mirabella Homeowners Association  
Oak Park Leisure Gardens Homeowners Association  
Oak Park Village • Oakhill Country Estates  
Parkside Owners Association  
Peppertree Condominium Association  
River Ridge Island Villas • Solera at Kern Canyon  
Spindrift Village Homeowners Association  
Surfside III Condominium Owners Association  
Terrace Lane HOA  
Top O'Topanga Community Association  
Traditions at River Oaks  
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Villa Del Sol Homeowners Association  
Villa Ventura Homeowners Association  
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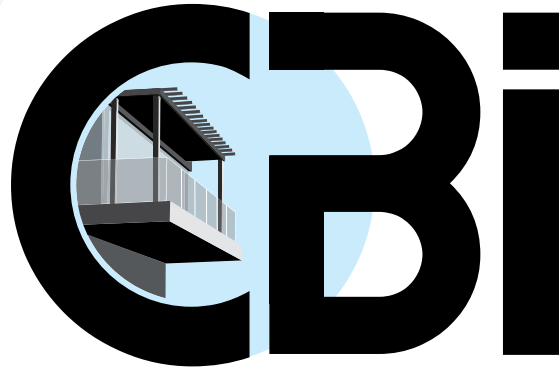
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