

# Channels of Communication

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

THIRD QUARTER 2022

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

## *all about* **ELECTIONS**

### **IN THIS ISSUE**

The New State of  
Election Laws

Free Speech, The  
First Amendment and  
Election Rights

Tips To Hold A Successful  
Board Election

Ask the Expert: Your Election  
Questions Answered



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# Channels of Communication

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



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# president's message



**Randy Stokes**  
Surfside III Condominium Association



Dear Members:

It's been a great year for the Channels Islands Chapter as we continue to grow our membership and increase attendance at chapter events. Indeed, at our August Chapter luncheon, we had 135 registrants and at our recent Community Faire, we had close to 200 in attendance. Thanks to all of you who helped make these events happen! Our recent Board Leadership Webinar Series had 70 registrants where board members and managers attended three sessions that provided industry training.

As mentioned our membership continues to grow. As of the date I am writing this message, we are getting very close to a Chapter first: 1,000 members! Maybe by the time you see this in print, we will have reached that number. Thank you to all of you for your help in taking this chapter to that great height!

Our California Legislative Action Committee (CLAC) continues to be very active in navigating pending legislation, and in advocating in the best interests of HOA communities. It is important that they receive as much financial support as possible in that work. In August, we hosted our Bingo & Brews fundraiser to support our California Legislative Action Committee (CLAC). This was a fun evening of networking while raising money for CLAC and assisting the chapter in getting closer to reaching our annual contribution goal. It's not too late to consider contributing to CLAC! Consider a Buck-A-Door (or more!) contribution on behalf of your community; a business or individual can also make a direct contribution. Every dollar counts and makes a big impact in advocating for California HOA communities. For more information, visit [www.caiclac.com](http://www.caiclac.com).

Looking ahead, make sure to join us for our upcoming luncheon programs including October 27th "The Devil's Advocate" where we will hear from chapter attorney members who take opposing views on controversial topics. This program will be both entertaining and educational. On November 17, we have our Annual Legislative Update Luncheon. Both programs will be held at Spanish Hills Country Club in Camarillo. For our Central Coast Members, save the date for our next luncheon in Nipomo on November 10. More info to come!

Again, thanks to all our members for your continued support, hard work, dedication, and leadership. We wouldn't be here without you.

Sincerely,

Randy Stokes  
CAI-Channels Islands Chapter President



# The New State of HOA Election Laws

By **Steven Tinnelly, Esq.**  
Tinnelly Law Group

Senate Bill 323 ("SB 323") was signed into law on January 1, 2020. SB 323 makes several substantive modifications to the Civil Code's provisions governing association elections so let's take a moment to make sure your association is up-to-date. Some of the more significant modifications require associations to amend their election rules to conform to new statutory requirements, limit the types of candidate qualifications an association may adopt, address the only circumstance for elections by acclamation, place limitations on who may serve as an inspector of elections, and bolster the ability of members to overturn an election that is not conducted in accordance with proper procedures.

## **New Election Rule Requirements**

Various amendments have been made to Civil Code § 5105 regarding the required content of an association's

election rules. The information below summarizes the more significant amendments and their impacts.

### **No Changes to Election Rules within 90 Days of an Election**

Any changes to an association's election rules may not be made less than ninety (90) days prior to an election. *Civ. Code § 5105(h)*. Associations with elections in the first quarter of 2020 should have their legal counsel **immediately amend their election rules** to comply with the new requirements of SB 323. Any amendments to the election rules beyond that which is specifically required by the new law will require use of the rule change procedure specified in Civil Code § 4360 (e.g., general notice of the proposed amendments to the election rules will need to be provided at least 28 days prior to the board's vote to adopt the amended election rules).

### **Voting Rights May Not Be Suspended**

An association's election rules must now "prohibit the denial of a ballot to a member for any reason other than not being a member at the time when ballots are distributed." *Civ. Code § 5105(g)(1)*. This means that an association may no longer suspend any member's voting rights. Any member is entitled to vote, regardless of whether that member is delinquent in the payment of assessments or is in violation of the governing documents.

### **Retained "Association Election Materials"**

The election rules must be amended to require retention of additional election materials, including both a candidate registration list and a voter list. *Civ. Code § 5105(a)(7)*. The voter list must include the name, voting power, and either the physical address of the voter's home, the parcel number, or both. The mailing address must also be listed on the voter list if different from the physical address within the association or if only the parcel number is used. The association is required to permit members to verify the accuracy of their individual information on both the candidate list and voter list at least thirty (30) days before the ballots are distributed, and any reported errors must be corrected within two (2) business days by the inspector of elections.

### **Candidate Qualifications**

SB 323 limits the scope of candidate qualifications that an association may adopt. The information below discusses each of the four (4) candidate qualifications that an association *may* adopt through its bylaws or election rules, as well as the mandatory candidate qualification that an association *must* adopt.

### **Current in the Payment of Assessments**

An association may require a nominee for a board seat to be current in the payment of regular and special assessments. However, a nominee's failure to pay fines, late charges, interest, and collection fees and costs may not be used as a basis for disqualification, nor may a nominee be disqualified if he or she has entered into a payment plan with the association or if he or she has not been provided an opportunity to participate in internal dispute resolution (IDR) with the association. *Civ. Code § 5105(c)-(d)*.

If not being current in the payment of assessments is adopted as a candidate qualification, the association is legally required to impose that same requirement on directors. *Civ. Code § 5105(c)(1)*. Director qualifications must be contained either in the association's articles of incorporation or bylaws to be enforceable (e.g., for a failure to meet the qualification to be used as a basis for the remaining board members to declare the unqualified director's seat vacant). *Corp. Code § 7221(b)*. Accordingly, if an association chooses

to require candidates for the board to be current in the payment of assessments, the association's bylaws will need to have the same requirement for directors. Those associations that do not already have such a requirement in their bylaws will need to amend their bylaws in order to establish the necessary director qualification.

### **No Joint Ownership Interest**

An association may disqualify a person from nomination as a candidate if the person, if elected, would be serving on the board at the same time as another person who holds a joint ownership interest in the same lot or unit and the other person is either properly nominated for the current election or is an incumbent director. *Civ. Code § 5105(c)(2)*.

### **Member for at Least One (1) Year**

An association may disqualify a nominee if that person has been a member of the association for less than one (1) year. *Civ. Code § 5105(c)(3)*.

### **Past Criminal Convictions**

An association may disqualify a nominee if that person discloses, or if the association is aware or becomes aware of, a past criminal conviction that would, if the person was

*(Continued on page 8)*

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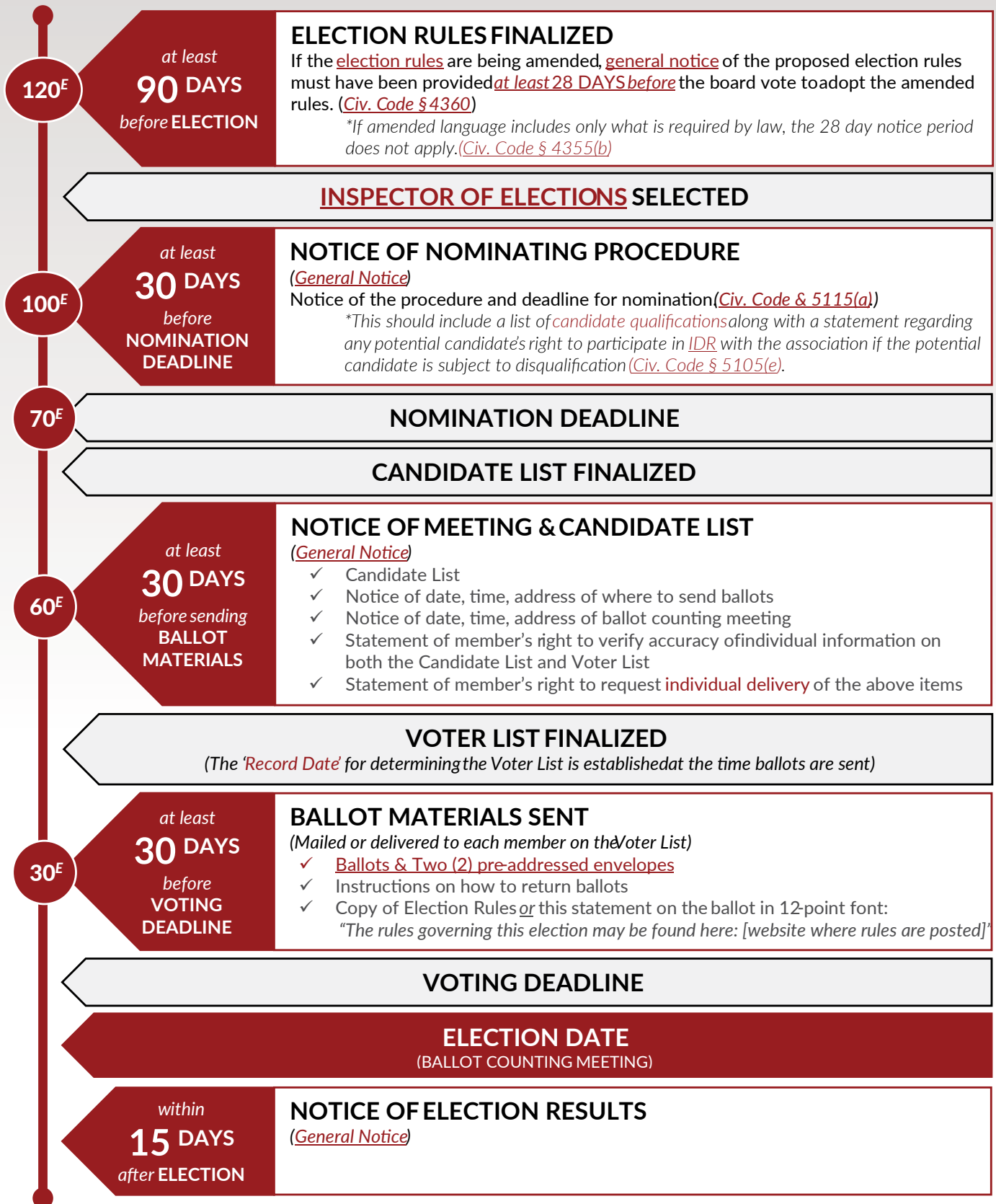
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# DIRECTOR ELECTION TIMELINE

Sample timeline for a director election as a result of the changes to the Civil Code's HOA election requirement (effective 1/1/2020).  
<sup>E</sup>=estimated days before Election Date



elected, either prevent the association from purchasing the fidelity bond coverage required by Civil Code § 5806 or terminate the association's existing fidelity bond coverage. Unfortunately, HOA insurance carriers have provided very little guidance on what types of criminal convictions would threaten coverage, as most policies use the broad term "dishonest acts" as a basis for policy cancellation.

### **Mandatory Qualification: Members Only**

Civil Code § 5105(b) now requires an association to disqualify a person from a nomination as a candidate if the person is not a member of the association (not an owner of a lot or unit) at the time of nomination. This means that non-owners are no longer permitted to serve on the board, regardless of any contrary provisions contained in the association's CC&Rs or Bylaws.

### **IDR Before Disqualification**

Regardless of the basis for disqualifying a person from nomination, an association may not disqualify the person "if the person has not been provided an opportunity to engage in [IDR]" with the association. *Civ. Code § 5105(e)*.

### **Elections By Acclamation**

[\*2022 Update – AB 502] Following the passage of SB 323, the Legislature then passed AB 502 (effective January 1, 2022). AB 502 added new Civil Code § 5103 to provide a new procedure through which an association may dispense with the need to send out ballots in a situation where, as of the close of nominations, there is not more qualified candidates than the number of vacancies on the Board to be elected (where the election is 'uncontested'). This procedure is referred to as conducting the election by acclamation.

To conduct an uncontested election by acclamation, there are significant, additional requirements that must be fulfilled. Among them is the requirement to send several new notices directly to the membership earlier on in the election process than what would otherwise be required for conducting a standard election.

When those procedural requirements have been fulfilled, if, at the close of nominations, the election is uncontested, the association need not proceed with the election process any further (no candidate list publication, no sending of ballots, no ballot counting meeting, etc.). Rather the board may, at a board meeting, declare the qualified candidates elected by acclamation.

### **Inspectors of Elections**

Some associations previously opted to have their managing agent or management company serve as inspector of elections, based upon prior language in the Civil Code allowing for such an arrangement to be authorized under the election rules. *Civil Code § 5110(b)* now prohibits any person, business entity, or subdivision of a business entity from serving as inspector of elections if that person, business entity, or subdivision of a business entity is "under contract to the association for any compensable service other than serving as inspector of elections."

While the managing agent or management company may be authorized to prepare and send balloting materials, the actual inspector of elections will either need to be a volunteer association member or a third-party inspector of election company. Attention will need to be paid in working with the inspector to ensure that any role to be played by management in connection with the election process is limited to only that which is allowed under the new state of the law.

### **Enforcement of Election Requirements**

Civil Code § 5145 has been amended to bolster a member's ability to overturn an election that was not conducted in accordance with all required procedures. If a member files an election challenge and establishes that the election procedures were not followed, the court is now required to invalidate the results of the election unless the association

*(Continued on page 10)*



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establishes, by a preponderance of the evidence, that the association’s noncompliance did not affect the election results. Additionally, a member who files a successful election challenge in small claims court is now entitled to recover his or her “court costs and reasonable attorney’s fees incurred for consulting an attorney” in connection with the election challenge. *Civ. Code § 5145(b)*.

**Pre-Election Notices**

New pre-election notice requirements effectively require an association to start its election planning approximately four (4) months prior to the election date (and even longer for an election by acclamation). These notice requirements pertain to notice of nominating procedures, notice of the candidate list, and various other statements that must be provided to the membership before ballots are sent.

**Summary & Recommendations**

The proponents of SB 323 assert that incumbent boards have undermined the democratic function of associations by, among other things, improperly disqualifying members from running for the board and limiting members’ voting rights. SB 323 is intended to provide a ‘fix’ to these and other problems by removing much of the discretion associations

previously had to develop voting rules and procedures. Regardless of whether the ‘fix’ was needed, some of the statutory changes are helpful in emphasizing the significance of association elections and the important role they play in the continued success of the community.

**Associations that have not already begun the process of amending their election rules to accommodate the changes imposed by SB 323 should seek immediate assistance from their legal counsel. ↑**

*Steven J. Tinnelly, Esq. is the managing partner of Tinnelly Law Group, a law firm that represents over 1,300 common interest developments throughout California. In addition to managing his firm’s overall operations, Steve is a frequent speaker at educational seminars and devotes much of his time to authoring content for his firm’s various educational resources and websites. Steve is very active within the community association industry and served as president of CAI’s Orange County Regional Chapter in 2020.*



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# CAI-CHANNEL ISLANDS CHAPTER PROGRAM: 2022 Legislative Update Thurs., November 17 • 11:15am

**11:15am:** Lunch & Networking **Noon:** Educational Program  
**Spanish Hills Club** 999 Crestview Ave., Camarillo

Join us for our annual Legislative Update. This year, Louie A. Brown, Jr., CAI-CLAC's Legislative Advocate will be joining our CLAC Delegates for a discussion on:

- ✓ The inner workings of Sacramento
- ✓ Issues important to Common Interest Developments
- ✓ Updates to legal requirements from a case law perspective
- ✓ Possible legislation for 2023

## PROGRAM SPEAKERS



### JAMES PERERO, ESQ.

Myers, Widders, Gibson, Jones & Feingold, LLP, CLAC Delegate  
James Perero is partner at the law firm Myers, Widders, Gibson, Jones & Feingold, LLP where he represents community associations as general and litigation counsel. His work with community associations aims to improve and strengthen the quality of life for community association members through development and enforcement of effective governing documents, and, when necessary, through litigation. Mr. Perero is an active member of CAI-Channel Islands Chapter and currently serves as the chapter's CAI-CLAC delegate.



### STEVEN A. ROSEMAN, ESQ.

Roseman Law, APC, CLAC Delegate  
Steven Roseman, Esq. is the founder and managing partner in the law firm of Roseman Law APC. Over the past (26) years, Mr. Roseman has represented homeowners associations and their boards handling their Association legal matters. Mr. Roseman is an active member of both CACM and CAI and currently serves on the chapter's Board of Directors and as chapter delegate for the California Legislative Action Committee (CLAC).



### LOUIE BROWN, ESQ.

Louie Brown, Esq., CLAC Advocate  
Louie A. Brown Jr. is a partner with Kahn, Soares, & Conway, LLP and manages the firm's Government Relations Team representing clients before the California State Legislature and various state administrative agencies. Louie specializes in providing clients with expert advice in maneuvering through California's complex legislative process. He testifies regularly in the Capitol before many legislative committees on behalf of clients and has written numerous laws and played key roles in many of the Legislature's major accomplishments and budget negotiations over the last decade.

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## EXHIBITORS





# free speech

## The First Amendment and Election Rights

By Jeffrey A. Beaumont, Esq., CCAL and A.J. Jahanian, Esq.  
Beaumont Tashjian

With the spotlight shining brightly on community association elections in light of Senate Bill 323 (and more recently, Assembly Bill 502), it is important for boards and managers not to overlook the laws that have been in place previously, both since recent history and since the Founders drafted our Constitution.

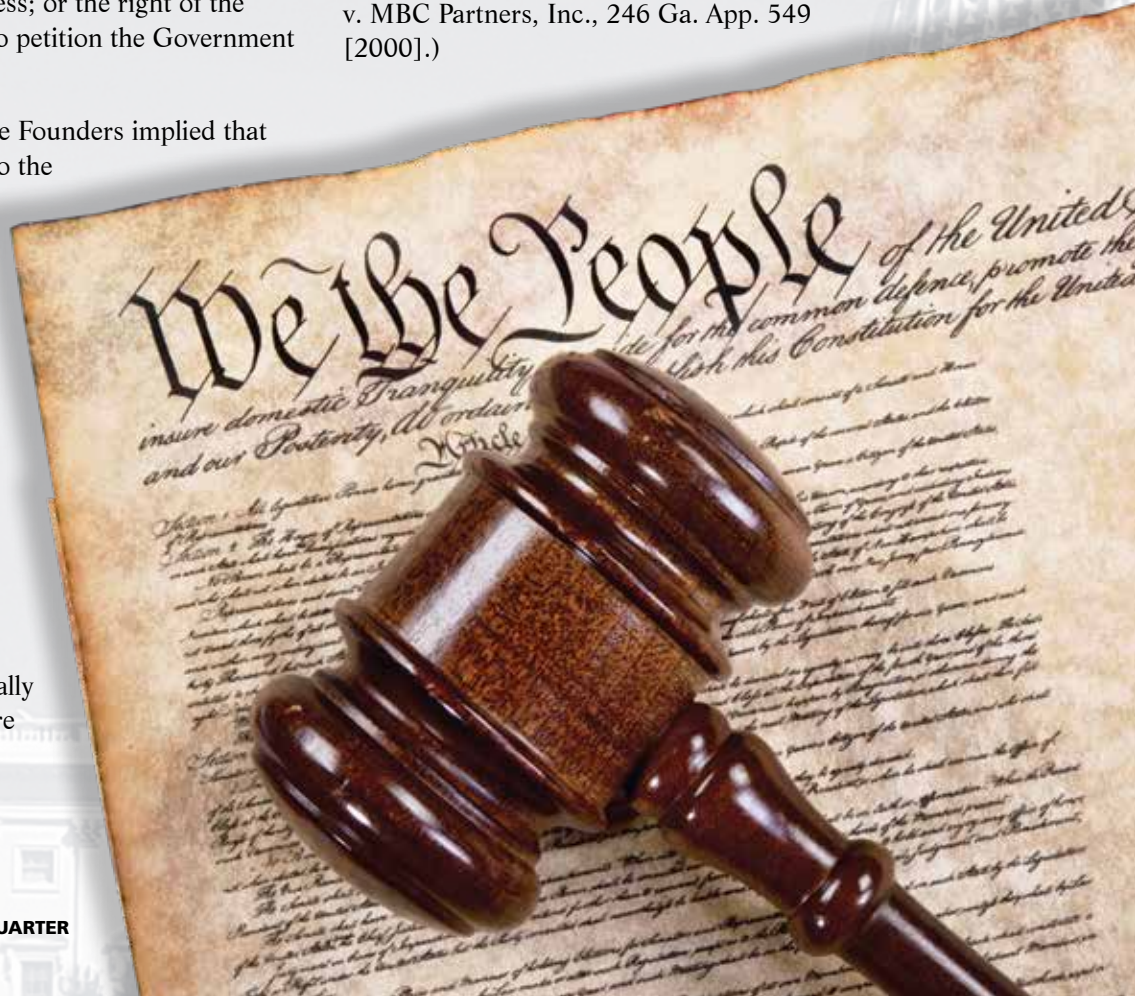
As a citizen of the United States, the First Amendment prohibits the government from restraining your First Amendment free speech right. The Constitution is clear, stating that:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.”

By using the phrase “Congress,” the Founders implied that the First Amendment only applies to the Federal Government. However, over the years, Courts have applied the First Amendment to other entities, including state and local governments. The questions then must be asked, does the First Amendment apply to community associations, and are boards and managers subject to liability for placing restrictions on owners’ speech? With the Legislature adopting controversial laws such as Senate Bill 323 and Assembly Bill 502, understanding owners’ speech and election rights is especially important, as community leaders are confronted with challenging issues.

### Are Community Associations State Actors?

The short answer is that it depends on which state you’re asking. Massachusetts for example, has ruled that, since community associations are subject to state laws, their actions that violate state law (i.e., restrict free speech) are illegal. On the other hand, other states, such as Kansas and Pennsylvania, have ruled that community associations in those states are “private” entities, who can restrict some forms of speech. The Court of Appeals of Georgia, on that end of the free speech spectrum, has also held that a free speech restraint in a community association’s governing documents is valid and enforceable, because owners have contractually agreed to abide by those restrictions. (*Bryan v. MBC Partners, Inc.*, 246 Ga. App. 549 [2000].)





The State of California finds itself somewhere in the middle of this debate. Courts have concluded that associations' actions qualify as "state actions," if the property is freely and openly accessible to the public. (Golden Gateway Center v. Golden Gateway Tenants Assoc. [2001] 26 Cal.4th 1013.) For example, a private common area hallway in a condominium complex would not be "open to the public," but a clubhouse that the association rents out to members of the public would be. Where the property has virtually unrestricted access and is open to the community at large, a free speech restriction applied to members or invitees of these locations, would be problematic.

### **Restrictions Must Still be Reasonable and Compliant with State Law!**

Even on private association property, associations must refrain from adopting rules and restrictions that might be considered "unreasonable." While rules prohibiting threats, obscene speech, defamatory statements, harassment and/or promotions of violence or harm would certainly be reasonable, others may not be, particularly if they infringe on another statutory or constitutional right.

For example, the California Civil Code provides that the governing documents may not prohibit an owner from posting or displaying a noncommercial or political sign, poster, flag, or banner, on their separate interest, unless doing so is required to protect public health or safety. (Civ. Code § 4710(a).) Owners cannot be prohibited from displaying "for sale" or "for lease" signs upon their properties either. (Civ. Code §§ 712, 713.)

In that same breath, Senate Bill 407 ("SB 407"), which took effect January 1, 2018, applies additional free speech and assembly rights to community associations and their members, which are particularly relevant during the election cycle.

In 2017, the Legislature wanted to pass a law that would "ensure that members and residents of common interest developments have the ability to exercise their rights under law to peacefully assemble and freely communicate with one another and with others, with respect to common interest development living or for social, political, or educational purposes." (Civil Code. § 4515(a).) This law significantly impacted communities, especially those with common area meeting spaces.

For example, under SB 407, the Civil Code requires that owners and residents be allowed to use common area facilities for meetings related to association issues, legislation, elections to public office and public ballot measures, without being charged a fee or being required to purchase insurance. Additionally, an association would be in violation of the law if any of its governing documents

prohibit owners or residents from inviting public officials to the association, to discuss matters of public interest, in the common areas.

In addition to addressing members' rights to use common areas for meetings, SB 407 touched on the right to distribute information and canvas/petition the community. For example, under Civil Code Section 4515, the governing documents cannot prohibit an owner from "canvassing and petitioning the members, the association board, and residents...[or] circulating information about...association elections, legislation, election to public office," etc.

The impact on you, our community association leaders, will be immediately felt, especially come election season. Candidates may begin distributing flyers about the election, requesting to use common area facilities to meet about the election (for which they cannot be charged a fee or security deposit) and inviting members of the public to speak to fellow residents. This may create confusion and contention, particularly in communities with hotly contested elections.

Fortunately, the Civil Code provides that the specified meetings, distribution of information, petitioning and

*(Continued on page 14)*



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## Free Speech (Continued from page 13)

canvassing may be “during reasonable hours and in a reasonable manner.” This means that boards can and should adopt reasonable regulations on these activities, ensuring that neither SB 407 nor any other constitutional or speech-related rights are infringed upon. For example, owners and residents should be required to reimburse the association for costs to clean common area meeting spaces. Reasonable rules may also establish a protocol for reserving a meeting space, as well reasonable hours and days of the week when owners can solicit/canvas.

### Conclusion

With the election cycle fast approaching, boards and managers need to be prepared. Through SB 323 and AB 502, the Legislature created a law that has caused significant confusion and frustration with respect to the processes and new rules governing association elections. SB 407 provides a direct avenue for members to air that frustration, through holding meetings in the common areas and/or distributing information about the election.

Adopting policies and procedures regarding speech, assembly, canvassing the community, posting signage,

distributing flyers, and the like, will put you ahead of the game in combatting the foreseeable issues that come with each election season. But doing so requires walking the thin line of “reasonableness” and compliance with our federal and state free speech protections. Any rule or restriction should contain the phrase, “unless otherwise provided by law,” to ensure that it is not infringing. When in doubt, seek legal advice on what rules and policies would be legally sound, while helping board members and community managers conduct meetings and elections, or otherwise perform their obligations to the association. [↑](#)

**Jeffrey A. Beaumont, Esq.** is the senior partner and **A.J. Jahanian, Esq.,** is an associate attorney at Beaumont Tashjian, a firm providing general counsel, litigation and assessment collection services to common interest developments.

They can be reached at [jbeaumont@hoaattorneys.com](mailto:jbeaumont@hoaattorneys.com) and [ajahanian@hoaattorneys.com](mailto:ajahanian@hoaattorneys.com), respectively.



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# GAME TIME

CAI-CHANNEL ISLANDS CHAPTER'S  
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The chapter hosted its third Community Faire this year on September 29 at Spanish Hills Club in Camarillo. Board Members and managers joined us for an educational session covering rule enforcement presented by Tara Radley, Esq., Beaumont Tashjian and James Perero, Esq., Myers, Widders, Gibson, Jones, & Feingold, LLP. Managers made their way to a hosted happy hour with event sponsors while board members networked with exhibitors. The event featured a second educational session “Free Legal Q&A” presented by Adrian Chiang, Esq., SwedelsonGottlieb and Matthew Plaxton, Esq., Tinnelly Law Group. Thank you to our speakers for presenting educational programs for our members and special thanks to our sponsors and exhibitors for supporting this event.



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# Quick Hits: Elections and Acclamation

By **Matthew A. Gardner, Esq.**  
Richardson/Ober

Even after the California Legislature responded with some common-sense ideas for tackling burdensome elections, most of us are still trying to find out whether these changes will really end up saving time and money. Below are some continuing questions that come up frequently, and answers that might help you improve your odds.

**QUESTION:** *Can a non-owner resident count the ballots?*

**ANSWER: Yes!** The Civil Code places some restrictions on who can be considered a neutral Inspector of Election. Under Civil Code 5110, the board selection can also include the below:

- a volunteer poll worker with the county registrar of voters
- a licensee of the California Board of Accountancy
- a notary public

What the Civil Code **does prohibit** is a director, a candidate for director, or a person who is related to a director or candidate. It also prohibits anyone or any company who is under contract to the association for any services other than serving as an inspector of elections. As a result, the association cannot use their management company, CPA, attorney to act as inspector if they are also performing those other services. So, as long as the non-owner does not fall into one of those prohibited categories, then that person can serve as an Inspector.

**QUESTION:** *If a homeowner is the inspector of elections, does that homeowner have to hold on to the ballots for the next 12 months?*

**ANSWER: No.** Under Civil Code 5125, the election materials have to be kept by the inspector of election **OR** at a location designated by the inspector. For the one-year period after the ballots are counted, the materials should be stored in a place designated by the inspector. As long as the inspector designates that spot, and the materials can be recovered after a challenge, the inspector is not required to maintain physical custody.

**QUESTION:** *If a board has not updated their election rules, is their election invalid?*

**ANSWER: Maybe?** Associations are required to have election rules. And under Civil Code 5105,

those election rules are required to have specific information included in them. Associations who have extremely out of date election rules may be missing important notices about director qualifications, acclamation, or other campaigning or meeting requirements. Even if your election is conducted consistent with all the new time and notice requirements, there is a chance that an election could be considered invalid. Owners who believe that incomplete or out of date election rules impacted the results may decide to challenge the outcome of an election. The best policy is to work with your legal counsel to determine whether your rules expose your elections to a challenge.

**QUESTION:** *If the association can hold an election by acclamation, can it approve the IRS Ruling 70-604 without a written ballot? Or can we still send ballots for the IRS Ruling?*

**ANSWER: Yes! Also, Yes!** When it comes to association elections under the Civil Code, an election by acclamation is the process of filling board seats without the need for officially counting all of the secret ballots to determine the results. Rather than having to mail and count secret ballots, the association is permitted to consider the election process complete and declare the seats filled. The opportunity to use the election by acclamation process occurs when the number of candidates is equal to the number of open seats.

If you are able to make use of the acclamation process, the association no longer needs to count ballots for the directors. However, the association may still need to hold an annual meeting to conduct other business. That means that the association could still bring up the issue of the IRS resolution at the annual meeting, and conduct the vote on the issue without a written ballot. Under the Civil Code 5100, voting on the IRS resolution does not require the association to use the secret ballot process. So, if the





annual meeting meets quorum requirements, you could simply conduct a vote in person at the meeting on the IRS resolution.

However, most associations include a written ballot for the IRS resolutions along with their board of directors' ballot. If that is part of the normal practice, then the association can still send out written materials on the other items of business for the annual meeting, especially when the returned ballots can be counted to help meet quorum. Even if the association uses the acclamation process to avoid counting director ballots, it could still have the inspector tabulate the results of the other issues that might be included on the ballots, including the IRS resolution.

**QUESTION:** *At what point should the board vote to approve election by acclamation, and at what time should the announcement be sent to the community? Should it be once nominations are received and before ballots are mailed out or should the vote happen on the date of the annual meeting?*

**ANSWER:** **It Depends!** Under Civil Code 5103, the association is permitted to declare an election by acclamation when the number of qualified candidates is not more than the number of vacancies to be elected. As long as the association has submitted the required notices and repeated warnings about the number of candidates needed, the association can announce the acclamation at any time after the close of nominations.

One of the reasons to use acclamation is to avoid the need for meeting quorum requirements or counting ballots. If the only issue for the annual meeting was to elect directors, then cancelling the annual meeting avoids the need to spend time, money, and effort mailing and counting ballots. This can be a major benefit! However, Civil Code 5103 still requires the name of each qualified candidate that will be seated by acclamation to be included on the agenda of a meeting. If there are other issues or items (**like the IRS resolution listed above**), the association may decide to mail out ballots and conduct the acclamation announcement together at a later meeting that tackles all association issues.

The decision may vary from year to year, depending on

what other items of business the board and the owners need to discuss. Also, remember that the acclamation option cannot be used every year to avoid elections. One of the requirements before using acclamation is demonstrating that the association has held a regular election for the directors within the last three years. Have the board and the manager connect to see which option makes the most sense for that particular year. You may even need to run that issue by legal counsel if there are any questions about meeting acclamation requirements.

## Happy Election Season!

*Matthew A. Gardner, Esq. is a partner of Richardson | Ober who works with community associations, homeowners, and HOA boards of directors to amend governing documents, resolve homeowner/member disputes, manage assessment delinquency matters, and provide leadership training to volunteers and community members. Mr. Gardner is an active member of CAI-Channel Islands Chapter where he serves as the webinars programs committee co-chair and is a frequent author for the chapter's publications.*



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# Tips To Hold a Successful Board Election

By **William Yarian CMCA®, AMS®, PCAM®**  
*Infinity Property Services AAMC*

**M**any community associations have difficulty motivating their homeowners to vote in Board elections. The problem is establishing a quorum for Board elections or voting on other matters. Some governing documents provide a reduced quorum by adjourning the first meeting attempt, usually from 50% to 25%. In such cases, adjourning the first meeting attempt reduces the quorum requirements. Sometimes the Board decides to cease any further attempts to hold a second meeting, knowing that the chance of obtaining a quorum is low. So, what can one do to have a successful Board election with increased member participation?

## **Legal Compliance**

Following the governing documents (election rules and the bylaws) are mandated by California state law. Recently, the California legislature updated the community association

election statute in 2020 by passing SB323. Check to verify that your association's election rules comply with state law.

## **Communication is Key**

Notifying homeowners of an upcoming election and listing the number of open positions very early is encouraged. Sending communication via mail and email and listing it on the association website ensures communication will reach homeowners. Remember to include the same communication in the association newsletter. Communicate timely and frequently to engage homeowners. Using different means of communication increases the chances for homeowners to vote. Including and highlighting board decisions, announcements, and upcoming projects and events to assure homeowners that the Board is looking out for their best interests. With frequent communication and information sharing, homeowners are more likely to be involved in Board member elections.

Providing opportunities for homeowners to meet candidates for the Board election makes them more likely to become invested in the process. For Board elections, consider organizing a candidate forum before the election to allow homeowners to come out and speak to candidates and listen to what they present. Consider offering refreshments and snacks for in-person town hall meetings. Providing ballots at these in-person events makes it convenient for homeowners to cast their ballots. The Inspector(s) of Election can help with providing ballots and collection.

Board meetings, community events, and other group activities are good opportunities to share the successes of the community. By hearing about successes and receiving updates and information throughout the year, homeowners will be engaged and increase their odds of voting. The association often communicates in writing, and sharing the same information verbally is beneficial. Both written and verbal association communication increases the odds of reaching more homeowners and higher voting participation.

### Encouragement

Encouraging homeowners to participate is an ongoing effort. Volunteers serving on committees could encourage homeowners to vote in their interactions. Board members and the association manager interact with homeowners in meetings or community events where they can also remind and ask homeowners in attendance to vote in Board elections. The community manager speaks and exchanges communication with homeowners daily and frequently and can encourage homeowners to cast their ballots in the election. Sometimes homeowners need education about the vital role the Board has in running the business of the association. The community manager can provide this education and encouragement to increase homeowner participation in Board elections.



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### Association Funds

Some Boards consider sponsored incentives to encourage homeowners to participate in voting using association funds. However, the association's governing documents may prohibit the use of association funds for this purpose, and such action may also be a conflict of interest or a breach of the Board's fiduciary duty. In this regard, if the Board considers offering a prize via a raffle, then the Board should consult with the association's legal counsel before using association funds to pay for prizes or incentives.

### Raffle Prize

Instead of utilizing association funds, the association could solicit local businesses, such as restaurants, to offer a raffle prize in exchange for the association sending out a notice to homeowners regarding the prize offered by that restaurant. Other local businesses may be interested in offering a free raffle service and be mentioned in a notice from the association to the homeowners. One important consideration is to ensure there would be no conflict of interest between the local businesses and the association.

*(Continued on page 20)*



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## Proxy

Using proxies in communities having difficulty establishing quorum could be beneficial if permitted in the governing documents. Providing and requesting homeowners to complete and return their completed proxy, even if they plan to attend the meeting, improves the chances of reaching a quorum. A proxy is a written authorization that allows one person to appoint another person to vote on their behalf. A proxy can be rescinded if the homeowner attends the meeting. If they do not attend it in person, their proxy can be used to establish a quorum. Review the association's governing documents and consult with the association's legal counsel regarding proxies to ensure proxies are permitted and comply with the applicable law.

## Transition Support

Board transitions typically happen immediately after an election, which means the new Board members start performing Board duties immediately. New Board members with no prior experience will need support and education. Whether studying the governing documents or shadowing a previous Board member, it's beneficial for the Board to keep the transition from the previous Board to the new

Board as smooth as possible. The community management company is a good resource for training and support for new Board members. Community Association Institute (CAI) offers many resources and opportunities for Board member education.

An extensive overhaul to the election laws for community associations took effect in 2020. Below is a guide summarizing the main steps of the election process.

**Step 1:** Set Important Dates

**Step 2:** Call for Nominations of Candidates

**Step 3:** Post-Nomination Proceedings

**Step 4:** Verify qualification and Appointment of Inspector(s) of Election

**Step 5:** Distribute Pre-Ballot Notice

**Step 6:** Distribute Ballots

**Step 7:** Meeting Date to Count Ballots 

**William Yarian CMCA<sup>®</sup>, AMS<sup>®</sup>, PCAM<sup>®</sup>** is the owner and CEO of Infinity Property Services AAMC, a full-service management company serving Los Angeles and Ventura counties. He can be reached at [william@ipsmanage.com](mailto:william@ipsmanage.com).



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CAI-CHANNEL ISLANDS CHAPTER'S

# BINGO & Brews



Thank you to everyone who joined us for Bingo & Brews on August 4 at M on High Restaurant in Moorpark. This event supported our California Legislative Action Committee (CLAC) by raising over \$6,000! These proceeds go directly to CLAC to continue to support their efforts in monitoring legislation that directly impacts our industry. It was a fun event had by all in attendance as we networked, played bingo, gave away prizes, and had many laughs! We are excited to make this an annual event to support CLAC.



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# CLAC Advocacy Update

By James Perero, Esq.

Myers, Widders, Gibson, Jones, & Feingold, LLP



In 2022, CAI's advocacy continued its focus on providing critical homeowner and expert perspective to state legislators regarding challenges facing community associations statewide. Additional emphasis was placed educating regulatory authorities on issues regarding insurance and collections. This year, specific focus is given to:

## Property/Fire Insurance

An unsettling trend is that insurance policy renewals are triggering dramatic cost increases to community associations. Associations are being asked to pay five to ten times what they paid as recently as one year ago. This is the single largest contributor to assessment increases statewide. CAI-CLAC has worked extensively with California's Department of Insurance to address the issue. In specific, efforts have focused on making improvements to the California Fair Plan (Fire Insurance) so that community associations will, for the first

time, have access to an insurance tool meant to provide a way for Californians to have affordable fire insurance.

## Fannie/Freddie

Following the Surfside Tower tragedy in Florida, federal home loan funding institutions Fannie Mae and Freddie Mac created new rules to force compliance and transparency regarding building maintenance. Questionnaires (traditionally referred to as "HOA CERTS") have been revised to require more specific information about the condition of common area components in community associations, which has delayed (and in some case, prevented) financing for sales transactions. Owners may find themselves unable to sell homes or refinance, and may not have the ability to pay assessments for repair of aging infrastructure.

## AB 1410 (Rodriquez)

CAI-CLAC's advocacy efforts resulted in substantial positive changes to this bill prior to its passage and signing by the governor. Provisions requiring director education and changes to disciplinary hearing procedure were stripped away. What remains are a) protections regarding online discussion of community association issues, b) limitations on enforcement proceedings during declared states of emergency where the nature of the emergency giving rise the state of emergency makes it unsafe or impossible for an owner to remedy the violation, and c) a prohibition on enforcement of restrictions that would preclude an owner from renting out less than the owner's entire separate interest (i.e., room rentals).

For further advocacy updates, please visit [www.caiclac.com](http://www.caiclac.com).

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**James Perero** is an attorney at the law firm Myers, Widders, Gibson, Jones & Feingold, LLP where he represents community associations as general and litigation counsel. His work with community associations aims to improve and strengthen the quality of life for community association members through development and enforcement of effective governing documents, and, when necessary, through litigation. Mr. Perero is an active member of CAI-Channel Islands Chapter and currently serves as the chapter's CAI-CLAC delegate.



# Welcome

to our new members!

## Manager Members

Veronica Cristiana, Oak Shores Community Association  
Miko Davies, Spectrum Property Services  
Denise Desmond, Oak Shores Community Association  
Deanna Guevara, Buenaventura Gardens  
Isabell Hernandez, Oak Shores Community Association  
Hailey Langston, PMP Management  
Kevin Tovar, Spectrum Property Services  
Traci Wagoner, Concord Consulting & Association Services

## Community Association Volunteer Leaders

Jeri Peterson, HG Gardens

## Community Association Boards of Directors

The Meadows Owners' Association  
Todd Ranch Homeowners Association

## 2022 CHAPTER EVENTS

### October

27 Chapter Luncheon, 11:15am  
Spanish Hills Country Club, Camarillo

### November

10 Central Coast Luncheon Program, 11:30 am, Nipomo  
17 Chapter Luncheon, 11:15am,  
Spanish Hills Country Club, Camarillo

### December

1 Holiday Happy Hour, 5-7pm, Westlake Village Inn  
15 Chapter Luncheon, 11:15am,  
Spanish Hills Country Club, Camarillo

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



**Congratulations to Monica West of CID Management Solutions, Inc. for earning the Certified Manager of Community Associations (CMCA®) certification.**

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## Thank you

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

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Dr. Gary Davis, Casa San Carlos Association • Judith Gustafson, Hitching Post Estates  
Stan Davis, Village Green • Laura Passmore • Rose Real

### Community Association Boards of Directors

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California Lighthouse HOA • Carefree Living of Hueneme Bay • Casa Del Pueblo  
Channel Islands Park HOA • Cobblestone Creek/Jensen's Crossing  
Country Lane Community Association • County Square Villas HOA  
Creekside Village Association • Decksides Villas HOA • Foxenwood Garden Villas II HOA  
Harbor Lights HOA • Hidden Pines Estates  
Hope Ranch Park Homes Association • Islay Pointe Villas HOA  
Leisure Village Association • Lobero HOA • Northwood Community Association  
Oaknoll Condominium Association  
Orchard Lane HOA • Pelican Point HOA • Peters Ridge HOA  
Pine Mountain Club Property Owners Association • Rancho Ventura HOA  
River Ranch Owners Association • Rose Island Homes HOA • San Luis Bay Mobile Estates  
Sandpiper Village II HOA • Silverado Owners Association  
Southshore Hills Property Owners Association • Surfside I HOA • Surfside IV HOA  
Tesero Community • The Club at Wood Ranch • Valle Del Sol  
Village Homes Property Owners Association • Whalers Village Club dba Malibu Shores Village  
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