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THIRD QUARTER 2020

The Official Publication of
CHANNEL ISLANDS CHAPTER
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HOMEOWNERS ASSOCIATIONS

MYTHS vs. FACTS

COMMON MISCONCEPTIONS DEBUNKED!

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The Channel Islands Chapter of Community Associations Institute is dedicated to empowering Homeowner Association members, managers and service providers through information and educational opportunities.

president's message

Steven A. Roseman, Esq.
Roseman Law APC

CHANNEL ISLANDS CHAPTER community ASSOCIATIONS INSTITUTE

My fellow CAI-Channel Island Chapter members,

I hope you are all doing well and staying healthy. While we continue to experience work and school from home and limited contact with others, it truly does highlight that human beings need personal contact and connections. While we cannot experience in-person events, our community has adapted and pivoted to these trying times to reach out "virtually" to connect our community. We hope you have looked at the challenges this pandemic has brought as an opportunity to reach out to your neighbors and build an even deeper sense of community. We all go through tough times and sometimes a friendly "hello" or "can I help in any way" can go a long way. Perhaps the laughter of children playing in the neighborhood reminds us to have some fun and share in the joy of others, even if it's from a safe distance. Our seniors experience even more isolation and loneliness during these times. I'm sure they would love a quick check-in to make sure they are okay and perhaps offer to assist them in picking up groceries.

Fortunately, we are blessed to tell that our chapter is thriving. We have sustained our membership numbers and participation throughout this pandemic. It truly highlights what a caring, loving and supportive community we are. If you would like to share a story highlighting your community, whether home or work community, please email it to our Executive Director, Leah Ross. We would love to feature it in our chapter magazine. Please email leah@cai-channelislands.org.

As we approach the final months of 2020, you may be finalizing your association budget. Our Chapter cannot thank you enough for making CAI membership a part of your annual budget. We appreciate the members who have timely renewed their membership and thank all those new members who joined as a result of our "virtual" events. Our Chapter has maintained our 900 members. Our chapter board and executive director are grateful for all your kind assistance, membership, and participation. Our membership extends from LA to Ventura, Santa Barbara, San Luis Obispo and Kern counties. What a unique opportunity to gather virtually as one very large chapter!

One other very important contribution we would like you to consider and include in your annual budget is a contribution to our California Legislative Action Committee (CLAC). This committee provides a statewide effort to promote, oppose and amend legislation (bills) that directly impact common interest developments in California. CAI employs a lobbyist to testify at hearings and educate the legislators in Sacramento. Locally, our chapter selects two delegates, a liaison and committee who support the statewide efforts by making visits to legislators in our districts to explain and educate CAI's position of various proposed bills. I have the honor of serving, not only as your "virtual president", but as one of your delegates for CLAC for our chapter.

Special thanks to those associations and business partners who have kindly contributed to CLAC. For more information on how your company or association can support CLAC and follow CLAC's efforts, please visit www.caiclac.com.

Thank you for your continued partnership with CAI-Channel Islands Chapter. We value it greatly!

Steven A. Roseman

Steven A. Roseman, Esq.
CAI-Channel Islands Chapter President

MYTHS VS. FACTS

Construction Defects and Balcony Inspections

By Rachel M. Miller, Esq. and Tracy R. Neal, Esq.
The Miller Law Firm

There is a lot of information about construction defects that come out for managers and board members every day. Now, there are new companies who provide opinions and services about the new balcony inspections requirements under SB 326 and how they relate the construction defects process, so much so that it can be hard to know what is fact and what is a myth. We have identified some common myths, and attempt to "de-myth-if-y" them in this article. The following is not meant to be an entire list of myths, but representative of the most common construction defects and balcony inspections requirements myths.

MYTH 1

Stucco and concrete slabs always crack and roofs, windows, and doors leak. It's normal and not a defect.

Defects can result from any number of design and construction problems. What constitutes a construction defect is wide-ranging. The presence of inadequate drainage, leaking roofs, bad plumbing, faulty wiring, cracked slabs, structural failures, electrical problems, safety code violations, siding, and stucco failures, failing foundations, poor soil compaction can all be considered defects. While hairline cracks may occur, cracks can and often increase in size and can be caused by poorly compacted or expansive soils, structural problems, or other building performance standards violations. Defects should be identified and independently investigated. Many construction defects law firms can arrange for independent investigations free of charge for an association. With the results of an investigation, however, do not just send a letter to the builder claiming defects without the guidance of counsel as this may trigger statutes of limitations that could impact the association's construction defects claim.

MYTH 2

The builder will fix the problem.

Builders may try to lull boards and owners into a false sense of security by claiming that the problems are normal or that they will fix the problem. Builders, their customer service staff, and repair contractors rarely really fix the underlying problem. They will patch, plug, and paint over the problem. Often, the problem reappears and the time to file a claim against the builder may have passed. Builders do not tell boards and owners what is really causing the roof to leak, the plumbing to fail or electrical fixtures to flicker. Builders frequently make only "Band-Aid" or cosmetic repairs. Boards and owners should not believe that the builder has the association's best interest in mind. Afterall, the builder created the problems and may be made to pay to fix the defects by a diligent board or vigilant owners.

MYTH 3

Construction defects lawyers solicit owners and association boards and trump up frivolous claims.

Statistically, over fifty percent of all homes and condominiums present building performance standards violations and have significant construction defects.

Boards of directors of associations have a fiduciary duty to investigate failing common area conditions and take timely and appropriate action. Builders have insurance for construction defects claims and every year insurance companies pay out millions of dollars to fix construction defects.

MYTH 4

A construction defects claim goes against the association's insurance.

Construction defects claims are not made against the association's insurance. Rarely, if ever, will association's insurance policy cover damages for defective design, faulty construction, or soil settlement. Consult with association corporate counsel before filing a claim with an insurance carrier. Filing a claim can result in increased premiums or non-renewal of a policy, placing a high-risk category on the association, even if the insurance company pays nothing on the claim. Experienced construction defects attorneys explore the ability of the builder's insurance coverage to pay a claim early in the construction defects claim process. Construction defects attorneys should make sure the builder, or any other potential defendant has the resources to pay a settlement or judgment. Even if the developer or defendants are no longer in business, there should be insurance available to satisfy a judgment. Construction defects attorneys would agree that it makes little sense to expend the time, effort, and expense of construction defects litigation if it is impossible to collect.

MYTH 5

Your association will be tied up for years in litigation.

Ninety percent of construction defects claims are resolved within 24 months of filing, and of those, over ninety-five percent will settle and never go to trial. Most construction defects attorneys will work on a contingency fee basis. They get paid when they win. They are motivated to resolve your construction defects litigation matter sooner rather than later. Cases handled on an hourly basis and/or by attorneys with little to no track record and unwilling to take on the risk of financing may take 3-5 years to resolve the case and in the end the association may be left with a hefty bill.

(Continued on page 8)

Continued from page 7

MYTHS vs. FACTS

MYTH 7

Builders will bury associations in legal fees and costs and the association will not win enough to repair the defects.

Experienced construction defects law firms will take association cases on a contingency fee basis, advance the significant expert costs, and take the risk if the association loses. A well-financed construction defects litigation firm will hold its ground against any builder or insurance company with seemingly endless resources. An association's corporate counsel should not pursue a construction defects claim on behalf of the association. Conflicts exist and the board should require separation and accountability. Specialty counsel such as construction defects attorneys may be able to circumvent the need for prolonged litigation. Insurance companies and insurance defense counsel usually know the top construction defects attorneys and knowing your construction defects attorney's reputation, insurance companies may decide to cut its losses and settle the case early through mediation.

MYTH 8

Owners will have to disclose that defect and the value of their house or condo will suffer and they will not be able to sell or refinance their house or condo.

Construction defects clams are common. The defects must be disclosed, but the owners did not cause the defects, the builder did and there is no stigma attached to the owners. Professional real estate agents, mortgage brokers, and home loan professionals know how to deal with disclosures and financing for owners wanting to sell or refinance their home during the construction defects claim process. Also, know that the sooner a construction defects claim is made, the quicker resolution can be reached, and the faster the association will receive the money to fix the defects.

MYTH 9

The Balcony Bill only requires balconies to be inspected.

The Balcony Bill now codified as California Civil Code Section 5551 requires association's to conduct inspections of a random sampling of the association's exterior elevated elements, such as decks, balconies, stairways, walkways, and their railings, that have a walking surface elevated more than six feet above ground level, that are designed for human occupancy or use, and that are supported in whole or in substantial part by wood or wood-based products by 2025 and every 9 years thereafter.

MYTH 10

A leaky balcony is not a construction defect.

For condo associations that are 10 years old or younger and have not yet pursued construction defects claims, then the required visual inspection under Civil Code Section 5551 may coincide with a site inspection conducted for purposes of identifying possible SB 800 violations and construction defects, including decks, balconies, stairways, walkways, and their railings. The builder may be presented with these inspection and subsequent repair costs under SB 800. The ability to conduct the required inspections in connection with potential construction defects claims may relieve those associations that are 10 years and younger and have not yet pursued construction defects claims, the significant costs associated with the inspections, and subsequent required repairs. In California, under Civil Code Section 944 builders are responsible and associations are entitled to all "reasonable investigative costs". If there are defects, and the association presents a claim to the builder under SB 800, the inspection requirements in Civil Code Section 5551 are a recoverable cost.

Rachel M. Miller, Esq., *Senior Partner and* ***Tracy R. Neal, Esq.*** *are attorneys with The Miller Law Firm, which specializes in construction defect claims.*

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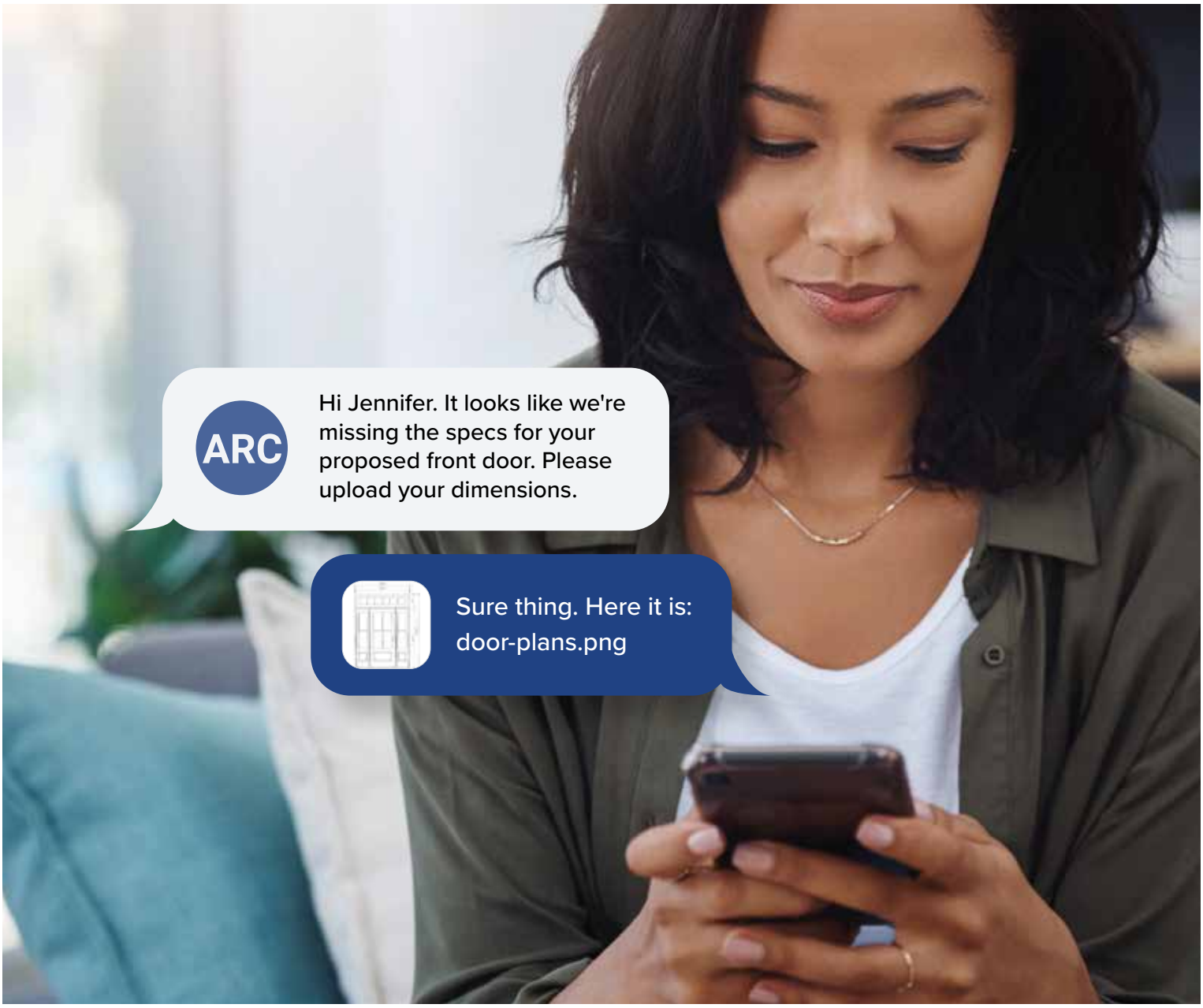

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MYTHS VS. OBLIGATIONS

The Burdens of the Board

By Matthew Gardner, Esq.
Richardson I Ober I DeNichilo

Being elected to serve on a board can bring anxiety. Every year, we see changes and adjustments to the Davis-Stirling Act that make serving as a director more and more challenging. But that doesn't mean that there are not easy ways to avoid falling into familiar traps. Below are some of the more common myths and thoughts on how to make board service less stressful.

MYTH 1

Board Meetings are always long and painful.

Meetings can be productive instead of painful. Make the agenda short and focused, and stick to it. Boards cannot act on any item unless it is on the agenda, so following the agenda keeps the meeting on track. Short well-run meetings respect both homeowners' and directors' time and may increase the number of homeowners who are willing to participate.

MYTH 2

Boards should conduct business by email to keep the meetings short.

Email discussions and decisions outside meetings are not only improper but also unwise. Civil Code section 4910 prohibits boards from using email to conduct business unless there is an emergency. Boards who follow those requirements are benefitting themselves and their fellow homeowners. Allowing endless email exchanges both creates more work for directors in between meetings and encourages homeowners' belief that boards are hiding important information. Use emails to keep fellow directors up to date on issues that are on the agenda. Otherwise, save the debate and decision for a meeting.

MYTH 3

Homeowners are disruptive and interfere with regular meetings.

Limit disruption by setting clear boundaries. Boards should remember that they are there to serve their homeowners. Emotions can run high if homeowners don't think they have a voice in their own community, so it is important to let them feel heard. In most cases, homeowner participation should be limited to open forum (see below).

If there are issues that require lengthy discussion and homeowner input, think about a dedicated meeting. There is no need to derail the regular business over an important but complicated project. A special meeting shows that the board values homeowner input and will not try to rush through decisions.

MYTH 4

Homeowners need answers during open forum.

First, open forum is a required part of a board meeting under the Open Meeting Act. Open forum is an opportunity for homeowners to speak, and directors to listen. Homeowners may want to offer an opinion on a matter under consideration or bring something new to the board's attention. In either case, directors should resist the urge to debate, discuss, or answer questions on the spot. Second, homeowners do not get to speak during other portions of the agenda. Homeowners who interrupt others should be asked to wait for their turn during open forum. Give appropriate warnings about expected behavior but remember to be firm and give everyone their allotted time to speak without interruption, even by the board.

MYTH 5

Minutes should be a transcript of the meeting.

Minutes of a meeting should be short. They are not designed to be a play-by-play account of every detail that occurred during a meeting. Minutes should reflect a summary of: the agenda, basic discussion points, the action taken during the meeting, and items raised (without identifying details) during open forum.

Approving draft minutes from a previous meeting should be a routine matter as well. Reading through the proposed minutes out loud as part of the meeting is not a productive use of anyone's time. Managers should provide, and directors should read, draft minutes before the meeting. That way, only changes need to be discussed and added. Otherwise, the minutes can be approved without further action.

MYTH 6

Boards have to make all association information available to owners.

Unless your documents promise more, homeowners are only entitled to receive certain association records. Boards need to be sure to protect privileged association details and confidential homeowner information, as well as ensure that homeowners are using those records for proper purposes.

Homeowners may only request specific records allowed by Civil Code 5200. Mostly, those records reflect financial information and the appropriate use of association funds. Associations should ask homeowners to state why they are using the reports and that it is for a proper purpose. Boards do not have to create "financial reports", disclose board packets, provide emails or other unlisted records for homeowners.

Matthew Gardner *is a partner of Richardson Ober DeNichilo who works with community associations boards of directors to amend governing documents, resolve homeowner / member disputes, manage assessment delinquency matters and provide leadership training to community members.*

MYTHS VS. FACTS

HOA Management, Insurance & More

By Wendy Weber
Insurance Services of the West

Why do homeowner associations exist? According to definition, *"A homeowners' association is a corporation that governs planned residential developments, townhouses, or condos."* *(www.lawdepot.com)* Per Community Association Institute's study in 2016, 24% of homes nationwide are under an association with more than 63 million American living in these communities.

In this article are comparisons of myths to facts, comparing what we think we know to what is true regarding homeowner associations in regards to insurance, management and disputes.

HOA Board Responsibilities – It's Not as Difficult as You're Making It.

MYTH

The goal of a homeowners' association is to foster a vibrant community with the general welfare of homeowners as its goal.

While many associations do foster a sense of community, the objective of an association is to set up governance regulating the use and operation of the common areas and amenities as well as maintaining property values. According to lawdepot.com, *"A Homeowners' Association is run by a board of directors that is elected by homeowners to oversee the common assets of a property/area, manage its finances, run business affairs, enforce and set rules, and see to the maintenance and upkeep of the area."*

INSURANCE

MYTH 1

Association members do not need to purchase personal homeowner's insurance as everything is covered by the association's insurance.

No, and this is where property managers can be heard reminding boards that members need to have personal HO-6 coverage. The association's insurance protects the association's property (common areas, shared structures). The association's insurance does not insure the association members' personal property. The best place to confirm what is and is not covered by the association is in the CC&Rs. The insurance carriers typically review the CC&Rs at the time of loss to determine what should and should not be covered in a claim.

MYTH 2

When an insurance carrier is alerted that there might be a claim, premiums for the association will be increased or coverage possibly not renewed at the end of the current policy term.

If no claim is made, OR if a claim is made but the carrier does not end up paying than the association's premium is not typically increased because of this information. Of course, if the association places many claims, even if they are not paid out by the carrier, that multiple reporting activity could affect the premium.

It is ALWAYS a good idea to put a carrier "on notice" if there is a possibility of a potential claim. Communicating to the carrier the cause and date of a loss that could become a claim is helpful for the association history and minutes as well as for the carrier.

MYTH 3

Associations do not need Workers' Compensation insurance as workers and vendors have their own insurance.

No, not exactly. If a worker or vendor is hurt on the association's property, they can sue the association for their medical expenses. If the vendor has workers' compensation, he may be able to make a claim on it. However, if the worker was an extra worker picked up that morning and is not an employee of the vendor company, the worker can sue the association. Also, if the vendor company's insurance lapsed, as sometimes happens, the damages incurred by an injury would not be covered by the vendor's workers' compensation policy, and the worker might have no choice but to seek damages from the association as a defacto employer.
For $361 a year for a non-payroll Workers Compensation policy, every association should have this protection. This is also a reminder for associations to be diligent in reviewing certificates of liability insurance for all their vendors.

MYTH 4

The board of directors can be sued personally by association members.

No. Board members cannot be personally sued for actions of the board. The board can be sued and that is why associations have Directors and Officers insurance.

MYTH 5

Flooding is covered by the association master policy.

No. Flooding and earthquake coverage require separate specialized policies. The deductible for these policies is typically based on a percentage of the replacement cost of the property.

MYTH 6

Renters are covered for their property and liability.

No. Renters are not covered and require Renter's Insurance for their personal belongings. The association policy does not cover personal property for any occupants, owners, or tenants. An owner should have liability insurance as the owner would be responsible for anyone hurt inside the unit.

MYTH 7

Mold, termites, and other infestations are covered.

No. Typically infestations are considered maintenance issues, and it is up to the association to have a scheduled plan to eradicate pests.

COMMUNITY MANAGEMENT

MYTH 1

The purpose of the HOA management company is to replace the board.

The management company is brought in not to replace the HOA board, but to help the board govern the community as effectively and as efficiently as possible. Board members may stay in close contact with the management company, ensuring that the best interests of the community are upheld, but the board is still very much the one tasked with making key decisions.

MYTH 2

The management company will seek to override or overrule the decisions of the board.

While the board may ask the management company to make a tough or complicated decision on its behalf—and while a good management company will seek to advise and inform board members—the company does not override or overrule decisions made by the board itself.

(Continued on page 14)

Continued from page 13

MYTHS vs. FACTS

MYTH 3

The management company does not assist with disputes among residents.

While the management company should never take sides between the board and the residents, it may provide some conflict resolution strategies and ultimately help positive outcomes to be reached. The property management company exists to help things run as smoothly and as seamlessly as possible.

DISPUTES, COMPLAINTS & ATTORNEYS

MYTH 1

Disputes are resolved by an independent tribunal with the opportunity to examine witnesses and the charges.

Generally, the board reviews complaints, issues notices and decides the issue.

MYTH 2

An association member can file a complaint with the local government for enforcement of state law violations by the board.

HOA disputes are treated as private disputes, and local police and attorneys do not get involved. Filing a civil suit is generally required, even in the case of a state law violation.

MYTH 3

The HOA attorney represents the association member and will assist in the owner's claims of wrongdoing against the board.

The attorney represents the HOA as reflected by the board. An association member needing legal representation would need to retain an attorney.

MYTH 4

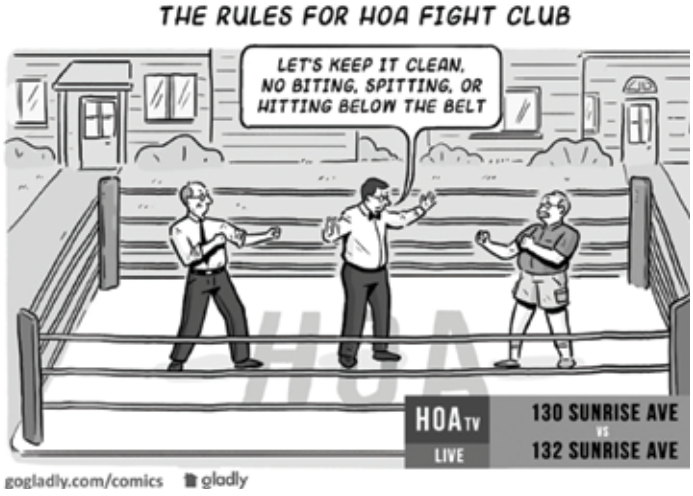
Not having read, signed, or acknowledged the provisions within the CC&Rs invalidates its legality.

Just the mere posting of the CC&Rs at the county clerk's office is sufficient to create a binding agreement when the owner accepts the deed.

MYTH 5

In a dispute with the homeowners association, an owner can stop paying their assessments until the dispute is resolved.

An owner must always make assessment payments regardless of any dispute. Buying into an HOA is equivalent to pledging the home as collateral for the timely and continuous payment of assessments.



SUMMARY

Being a manager or on the board of an association can be a demanding but a fulfilling role. As associations become a bigger percentage of home ownership in the United States (24% and growing!) it will be necessary to have more owners and managers who understand association governance and can help steer their common interest developments in positive directions.

Professional organizations such as CAI are in place to help board members and managers navigate this growing area of property government. Do not hesitate to reach out for help. There are regional chapters across the country ready to lend a hand with information and professionals in every area.

Wendy Weber *is Owner of Weber Insurance Services, Inc. DBA Insurance Services of the West, an insurance agency specializing in coverage for associations. Wendy Weber can be reached at wendy@hoaspecialist.com*

FOOTNOTES:
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Kristy DeSmit
www.lawdepot.com/blog/the-role-of-a-homeowners-association/#:~:text=A%20Homeowners%27%20Association%20is%20run,and%20upkeep%20of%20the%20area.

MYTHS VS. FACTS

Management Myths Debunked!

By Chris Alapont, CMCA, AMS, PCAM
Advanced Association Management Services, Inc.

Misconceptions or faulty information represent many challenges to association professionals and clients. Overcoming myths and conveying the truth requires patience and education in this complex industry. Myths from early history of condo management are "untruths" that basically rest in false information and lack of understanding.

The foregoing shared is based on 28 years of experience and represents my perspective along with information gathered from my colleagues and professionals in association management. Certainly, I am touching on just a few, but here are some common management and community association myths debunked!

MYTH 1

Some members of a CID as well as the public often confuse the Association Manager with Real Estate Agents; dispelling this has been difficult as both agencies work in real property management. The public and association members do not differentiate between the real estate brokers who sell property and management investment properties for their owners.

Condo management companies are very specialized and have very little in common with real estate brokers. Association management companies work for Common Interest Developments, as independent consultants, aiding the boards in the administration and care of the common areas. Real Estate professionals specialize in the guidance and assistance to owners in the buying, selling and rental of their clients' properties.

MYTH 2

Members of communities believe that the management company is the association and actually makes the business decisions, overriding the board. This misconception may be founded in the fact that the corporate office is the primary point of contact for the members and the board. The myth exists that the management company is brought in to replace the board.

Association managers hired for this job serve as an outside source, assisting and advising the board in the management of day to day operations and administration of the association. Members form the "association" and the board governs the same. Board members ask for advice and stay in close contact with the manager, ensuring that the best interests of the association are served. The board is the ultimate decisions-making authority for the association.

MYTH 3

Members assume that the company serving their community charges too much for the services they perform.

The complaining owners inform the association's board, the selection process for management was not judicious and they did not save money for the association.

The management fee in the budget represents only a small part of the many line items in the same. Good management company's contracts have a base fee that includes the major

duties in their jobs; hence most managers cannot even count all of the items included.

Further, a good manager is educated, earning certificates of merit, and continuing the education process throughout their career. Therefore, the manager with experience, education and knowledge saves money for the association. Hiring a skilled manager provides many benefits, making the job of the board less stressful and more efficient.

MYTH 4

Boards believe large companies with a large portfolio of communities provide better services in comparison to small or medium-sized firms. Boards often times equate quantity with quality, believing that more managers, as well as more departments are better equipped with infrastructure and knowledge necessary to manage their association.

Management companies whether large or small should be reviewed for the quality of their services, experience and knowledge. Companies offer different styles of management and different organization in their infrastructure. Quality through education, ethics, and knowledge along with good references will ensure a good choice.

MYTH 5

Many boards and members expect the manager to confer with them on matters that may not be included in their expertise or contract. Both the members and many times boards may misunderstand the manager's duties and the liability involved in requests by them to provide supervision in project management, construction, and landscaping, plumbing and electrical projects. Managers many times offer project management in their contracts, leading boards to believe that this offering is advantageous.

Association managers cannot offer services that they are unable to fulfill for their clients. Good full-time managers should fulfill duties to completion as outlined in their contract, owing their client honesty and integrity in contractual promises. Managers already have busy jobs and cannot humanly do everything.

Overseeing and directing employees of another company in working for associations presents liabilities and potential litigation. Managers cannot be involved with project oversight; they should complete the comprehensive and complex workload that competent managers are required to fulfill.

Good managers recommend professionals be hired for association work in their areas of expertise. The truth is, boards should not rely on and recognize sales pitches that present more liability than benefits.

MYTH 6

Association managers exert undue influence on boards to use their vendors. Owners are convinced that managers foist their vendors on the board. In addition, they believe the basis for this is some type of collusion with money-making schemes or "kick-backs".

With reputable, ethical companies proven by their record, nothing could be farther from the truth. Many reasons for vendor recommendations from management rests on the reality that money in fact can be saved. If a management company is partnered with "in-house" maintenance, landscaping or handyman services, full disclosure will be made. However, many companies do not offer these services to avoid any conflicts. Good managers offer a number of outside options for the board to select from and with involvement in CAI, have the opportunity to meet new vendors. Further, the management company has already vetted these companies and uses them for other associations. In this manner, the board looks good, along with management. This results in happy communities, happy board members and happy managers with less complaints to deal with.

In closing, I would like to thank Community Associations Institute (CAI) for providing the education and resources to guide community members and managers alike. Information gives us the tools we use to dispel myths and reduces stressful and combative relationships. We know that at the end of the day, we are just human beings working diligently to adhere to the highest standards of care, fiduciary relationships and ethical standards for our clients. We hope to provide effective, efficient and economical service to our communities, with an open mind to always learn more.

Chris Alapont *has been in the association management industry for the past 26 years and is the CEO of AAMS, Inc. AAMS is very grateful to have work during these difficult times and would like to thank their clients for believing in them.*

MYTHS VS. FACTS

But…That's All We Can Afford!

The Myth of Underfunding Reserves

By Robert Nordlund, PE, RS
The Myth of Underfunding Reserves

Which is better: paying $50/month for reserve contributions (as part of your HOA's total monthly assessment) or paying $100/month? All things being equal, I'd rather pay the $50 monthly bill. Which begs the question:

"Why would any board, empowered to set the budget at their association, choose the higher reserve amount for the owners?"

That question, faced by boards every budget year, reveals an important myth… that lower reserve contributions are always "better" and that higher contributions are always "worse".

But underlying this first myth is a second, more sinister myth: That the board even has a choice!

Board decisions are only deemed wise and enjoy protection from homeowner scrutiny and lawsuits when they overcome these three common law Business Judgment Rule burdens:
1. The Duty of Loyalty
2. The Duty of Care
3. The Duty of Inquiry

Let's work through them together:

Duty of Loyalty

Duty of Loyalty means acting in the interest of the association over the interests of the board members themselves or over the needs of any other individual owners. The basic complaint of "that's all we can afford" is an *arbitrary line in the sand*. It has nothing to do with the real ongoing cost of common area deterioration at the property. Boards that feel the need to respond to this complaint are tempted to reduce reserve contributions in order to match some arbitrary "affordable" amount. But deterioration is a bill that need to be paid regardless of its "affordability"! Boards need to focus on the interests of the association as a whole. Adequate reserve contributions are part of the true cost of owning a home in any association-governed community. Owners need to make their own informed decisions about continuing to be a member of the association. Although kind and thoughtful board members will naturally be sympathetic toward an individual owner's inability to keep up with the assessments, acting on that sympathy violates this very important first principle.

Duty of Care

The Duty of Care is different from the Duty of Loyalty because it means making decisions that are in the best interest of the association. But, like Duty of Loyalty, these decisions may not be perceived by board members or other individual owners, as being in their own personal best interest! As an example, if I personally feel that the cost to replace the old carpeting inside my home is too expensive, I can decide to save the money and not replace it. But that is very different than a board's responsibility to replace the lobby or hallway carpet when it is worn out, stained, or wrinkled.

Remember that the board's primary responsibility is to provide for the sustainability of the association through proper management and maintenance. The common areas (i.e., roof, paint, asphalt, elevator, hallway carpeting, pool equipment, etal) are in a constant and predictable state of deterioration. These common area components will need to be repaired or replaced with 100% certainty. Boards need to bring their expectations in line with the reality that reserve contributions need to be set aside on an ongoing basis, even though the roof doesn't send a "deterioration bill" each month.

Although, there are a few expenses faced by associations that are indeed "surprises" (e.g., construction defects, insurance deductibles, etal) and those are not reserve expenses. True

reserve expenses are predictable… you can see them coming years in advance, with plenty of time to prepare.

Duty of Inquiry

The Duty of Inquiry is the obligation on the part of the board to reach out for wise counsel when a decision they are facing requires a level of knowledge outside that of the "ordinary person". We can all agree in theory that board decisions should not be based on "feelings". But we see feeling-based reserve funding decisions happening all the time.

Initially published in 1998 by the Community Associations Institute and updated in 2019, National Reserve Study Standards include a strict 4-part test that dictates which types of projects that should be funded through reserves. This information serves as the foundation of every reserve study. An updated reserve study is the appropriate tool to use to learn how to properly plan for repairs & replacements and make informed reserve funding decisions.

So the question faced by the board is not "How much can our owners afford to contribute to reserves?"

The real question is
"How are we going to pay for deterioration?"
And the only two options are "sooner" or "later".

"Sooner", through ongoing appropriately sized reserve contributions, is always better for three reasons: It is fair, less expensive, and protects property values. The homeowners who have enjoyed the use of the common area assets as they have deteriorated pay their fair share of the deterioration cost along the way. With a fully-funded reserve account, special assessments and expensive interest-bearing loans are avoided. The property remains in top shape because there is no deferred maintenance. Curb and property values remain high.

(Continued on page 20)

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MYTHS vs. FACTS

"Later" is always going to be worse for three reasons: It is unfair, more expensive, and drags down property values. "Later" means that likely a different set of owners than the ones who enjoyed the use of those common area asset over the years will pay for the "catch-up" underfunding. This could come by means of a "special assessment", an expensive interest-bearing loan, higher costs due to deferred maintenance, a drop in curb appeal and home value, or all five. Setting aside lower contributions than recommended in your reserve study won't save money. Boards who choose to underfund reserves lead associations where assets are deteriorating faster than the contributions… digging a financial "hole" for future owners. "Later" also commonly means the project will be more expensive than initially anticipated. A good example is a delayed repainting project that will require significant carpentry repairs, or a delayed re-roofing project that now requires structural or water damage repairs.

So, as you can see, the idea that making lower contributions to reserves is "better" and making higher contributions is "worse" is truly a myth. It should also be clear how important it is for the board to be asking themselves the right questions. Boards are well-advised to rely on the Business Judgment Rule as a standard against which to measure their motivations and guide their decision-making. It is a valuable form of board protection!

Robert Nordlund *is a licensed Professional Engineer and the founder and CEO of Association Reserves. Since 1986, his company has performed over 56,000 Reserve Studies from its network of regional offices, for properties in all 50 US states and 12 foreign countries.*

Nordlund is frequently invited to speak at conferences and serve as a guest on webinars and podcasts. He is regularly quoted as a subject matter expert in various business & industry publications. He is a highly sought after Expert Witness in Reserves-related litigation throughout the United States.

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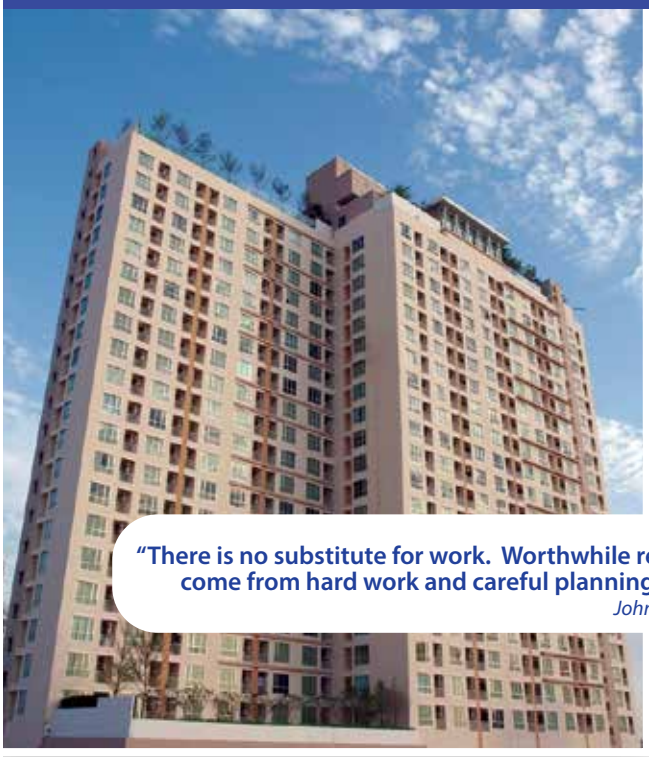

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CAI-California Legislative Action Committee Update: AB-3182 and the Attack on Rental Restrictions

By Sean D. Allen, Esq.
Roseman Law, APC

As many of you know, the California Legislative Action Committee (CLAC) is a volunteer committee of your CAI chapter, consisting of homeowners and professionals serving community associations. We are the largest organization in the country dedicated to monitoring legislation, educating homeowners and elected state lawmakers, and protecting the interests of those living in homeowners associations. Despite our best efforts, the California Legislature recently passed — and the Governor signed into law — Assembly Bill 3182. Unfortunately, this is going to have a very significant impact on the enforcement of rental restrictions in many common interest developments.

In general terms, the new law allows associations to prohibit short term rentals of thirty days or less, and to enforce a cap on rentals of twenty-five percent or more of the units in the association. Arguably, no other restrictions on rentals are allowed. To the extent that the owner lives anywhere on the rental property, including in the residence, in an Accessory Dwelling Unit (ADU), or in a Junior Accessory Dwelling Unit (JADU), then the property does not count as a rental unit at all. Please note that ADUs and JADUs are not allowed in condominium developments, so this distinction will only apply to planned developments with properties on individual lots. Also note that AB 3182 includes a change allowing for both an ADU and a JADU to be constructed on the same lot.

As for the timing, all associations are required to fully comply with AB 3182 as of January 1, 2021, and to add further burden, any associations with conflicting provisions in their governing documents are required to amend those documents by no later than December 31, 2021. There are civil penalties for noncompliance built into the statute, and actual damages are available to offended parties.

More specifically, Assembly Bill 3182 makes the following changes to the California Civil Code:
AB 3182 adds an entirely new section to the Davis-Stirling Act, as Civil Code § 4741. Per § 4741, a condominium or stock cooperative association may not unreasonably restrict the rental or leasing of an owner's unit. Similarly, a planned development association may not unreasonably restrict the rental or leasing of any of an owner's individual lot, including the residence, ADU, or JADU.

An association also may not impose a rental cap on the rental or leasing of lots or units to less than twenty-five percent of the total lots or units in the community, however a higher percentage is allowed. This rental cap applies to all associations, including condominiums, stock cooperatives, and planned developments, but the rental of an ADU or JADU in a planned development will not count toward the cap.

As for the required duration of a lease, an association may only limit short-term rentals by imposing a minimum lease term of 30 days or less. Again, this applies to all associations, but does not apply to the rental of ADUs and JADUs.

Importantly, the property may not be counted as a rental unit at all if the owner lives anywhere on the property, including within an ADU or JADU. This means that owner-occupied rental properties are essentially exempt from these rental restrictions under the new law.

As mentioned above, all associations are required to comply with these changes by January 1, 2021 regardless of what the governing documents say. To the extent an association's documents contain restrictions

which conflict with these provisions, the association must amend those governing documents to be in compliance by no later than December 31, 2021. There is no shortcut built into the statute for complying with this requirement. Those associations who need to amend their documents to conform to the new law must do so through the regular membership approval process.

Finally, the Legislature reaffirmed that new rental restrictions cannot be enforced against any owners who had purchased their property before the new rental restrictions were enacted. This means that, in the event an association's non-conforming rental restrictions are nullified on January 1, 2021, any existing owners on that date will be exempt from any new rental restrictions which are later adopted. In short, for many associations this will create a situation where all existing homeowners are grandfathered in and exempt from the rental restrictions, even if they would not have been in the prior year.

It is clear that these changes to the law will create a hardship on many of our community associations. Boards would be well advised to have their documents reviewed early by legal counsel to determine what, if anything, will need to be done to be in compliance. This bill is just one out of hundreds of bills that are considered each year. Unfortunately, CLAC was not able to defeat this one, but there will be many more on the horizon that are equally as dangerous.

CLAC operates entirely on the voluntary contributions of the members and homeowner associations we serve. You can support our efforts and help ensure that we are equipped to fight future unsavory bills by contributing to our "Buck a Door or More" campaign from your association. We make it as easy as possible for you and your association to get involved. Simply navigate to our website at caiclac.com/donate/buck-a-door and sign up. Every donation helps!

Sean D. Allen, Esq., *is a partner with the law firm of Roseman Law, APC, and is the head of the firm's HOA department for Ventura County. Having exclusively represented common interest developments for several years, he has broad experience with issues and disputes that impact community associations. Sean has served on the California Legislative Action Committee (CLAC) for our chapter since 2011.*

Tuesday, November 17 • 11 am

ANNUAL MEETING & CHAPTER WEBINAR

Mischief Managed: Practical Solutions for Managing Association Mayhem

This program will present common HOA challenges and how to work through them with your board and manager and discuss legal options to manage escalating challenges.

PROGRAM SPEAKERS

Matt Ober, Esq., Richardson, Ober, DeNichilo
Sascha Macias, CMCA, AMS, PCAM, FirstService Residential

Tuesday, December 8 • 11 am

CHAPTER WEBINAR

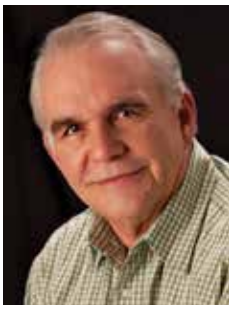
Discover How to Accomplish Great Things in Life & Business When You Set Your Primary Aim

Close the year with an encouraging message that will allow you to focus on creating goals for 2021 and beyond. This program will discuss reaching your own personal, business and community (HOA) goals by hearing real-life examples from those within our industry, who have set their "primary aim".

PROGRAM SPEAKERS

Josh Abramson, ALLBRiGHT 1-800-PAINTING
and industry examples presented by chapter members

Member Announcement



Cline Agency Insurance Brokers is pleased to announce the addition of (Skip) Robert Raymond Rawstron III, a well-known Commercial Real Estate Specialist in the industry. He will be joining their team as Real Estate Practice Leader, a natural fit with Cline Agency, which specializes in insurance and risk management for common interest developments and is widely recognized for their contributions to the community association industry on a local, regional, and national scale.

Your Announcement

CAI-Channel Islands Chapter would like to feature members who have special announcements including achievements, new staff and/or community involvement. Submit your company announcements to leah@cai-channelislands.org.

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Hannah Lupoli, PMP Management
Liliana Chavez, CMCA, The Colony at Mandalay Beach

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