Community Association Legal Symposium 2009

Town & Country Convention Center
San Diego, CA
Friday, October 30, 2009

EPSTEN GRINNELL & HOWELL APC
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Epsten Grinnell & Howell Legal Symposium 2009 is approved by the National Board of Certification for Community Association Managers (NBC-CAM) to fulfill continuing education requirements for the CMCA certification.

Epsten Grinnell & Howell Symposium 2009 is approved for one event CEU for CCAMs
# Program Guide Table of Contents

<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table of Contents</td>
<td>1</td>
</tr>
<tr>
<td>Agenda</td>
<td>2</td>
</tr>
<tr>
<td>The Exhibitor Network</td>
<td>3</td>
</tr>
<tr>
<td>Case Law Update</td>
<td>4</td>
</tr>
<tr>
<td>Legislative Update</td>
<td>11</td>
</tr>
<tr>
<td>Tabletop Topics</td>
<td>28</td>
</tr>
<tr>
<td>Sticks and Stones: Defamation and the Association</td>
<td>70</td>
</tr>
<tr>
<td>Debt Collection Quicksand</td>
<td>78</td>
</tr>
<tr>
<td>The Darkside of Litigation</td>
<td>92</td>
</tr>
<tr>
<td>HOA Water Conservation</td>
<td>95</td>
</tr>
</tbody>
</table>

*Thank you for attending*
PROGRAM AGENDA

8:00-8:45  Registration & Continental Breakfast
8:45-9:00  Opening Remarks
9:00 -10:00  Case Law Update
10:00-10:15  Break & Exhibitor Networking
10:15-11:15  Legislative Update
11:15-11:55  Q & A
Noon-1:00  Lunch - Networking
1:05-2:20  Concurrent Sessions:

Session A/ Pacific Salons 1 & 2

Round Table Topics –See page 29 for listings

Session B /Pacific Salon 3

“Sticks & Stones: Defamation in the Association”
“Debt Collection Quicksand”

2:25-2:40  Exhibitor Prizes
2:45-4:00  Concurrent Sessions:

Session A/Pacific Salon 1 & 2

Round Table Topics –See page 29 for listings

Session B/Pacific Salon 3

“Darkside of Litigation”
"HOA Water Conservation"
The Exhibitor Network

During the course of the day, please take advantage of the opportunity to visit the Exhibitor Network. In addition to providing you with information, it is their sponsorship that helps underwrite a portion of the program, enabling Epsten Grinnell & Howell to present this Legal Symposium at no charge.

- Alante/Millenium Insurance Services
- American Geotechnical, Inc.
- Arborwell
- Community Association Banc
- Del Mar Pacific General Contractors
- Flex Ground
- Jon Wayne Construction
- La Barre/Oksnee
- Leak Control Services
- Pacific Green Landscaping
- Payne Pest Management
- Premier Roofing, Inc.
- ProTec Building Services
- Pro - Tech Painting
- Rodent Pest Technologies
- SCT Reserves
- Sullivan Construction Mgmt.
- Three Phase Electric
- Union Bank of California
- Universal Protection Services
- Western Towing
- West turf Landscape
- California Association of Community Managers
- Community Associations Institute

Please note that the inclusion of these companies in the Symposium represents neither an endorsement nor guarantee of services on the part of those companies by Epsten Grinnell & Howell, APC, or its staff.
2009

CASE LAW REVIEW

MARY M. HOWELL, ESQ.
I. INTERPRETATION OF CC&RS


Homeowners in this planned residential development in Dana Point alleged that their views were blocked by palm trees. Some of the trees were planted by the developer, some were added thereafter by the homeowners. The palms had grown to a height over the roofline.

The CC&Rs required that "all trees" on a lot be trimmed not to exceed the roof of the house on the lot, unless the tree did not obstruct views. Because trimming a palm tree essentially means the tree would have to be removed, the Board had for many years simply excluded palm trees from the blanket trimming requirement.

When homeowners began to complain about the palm trees blocking views, the Board sought an opinion from a willing attorney who opined that the Board could refuse to trim the trees because one provision of the CC&Rs required homeowners to relinquish claims of view when obstructed by new construction or improvements. When it later turned out that this attorney was not skilled in HOA law, and was a close personal friend of the Board president (an "anti-view" advocate), a second attorney was hired who opined (1) the CC&Rs clearly protected views from obstruction by trees, and required trimming of all trees; (2) that the view waiver relied on by the first attorney only extended to construction, not to trees (because there was a specific provision requiring tree trimming), (3) the Board had no power to create rules which conflicted with the CC&Rs, (4) that if it wanted to exempt palm trees, the Board would have to get the CC&Rs amended to do so, and (5) that homeowners who had planted palm trees with the approval of the ARC might have an affirmative defense to forced removal.

The Board's response was _not_ to order trimming/removal of the palm trees. Rather, the Board created a new rule that defined view as "that which is visible from the back of the house, six feet above ground level, looking straight back...between lot lines." Unfortunately (and perhaps inevitably) that definition meant "no view at all" for some of the plaintiff homeowners, since their lots were pie-shaped.

When the Board continued to refuse to order the trimming of palm trees blocking plaintiff homeowners' views, the homeowners sued for declaratory relief and a mandatory injunction forcing the HOA to trim the palms.

The trial court granted an injunction requiring the trimming of the palm trees, and the Court of Appeals upheld the order. The DCA indicated the CC&Rs were clear, and
required the trimming of all trees reasonably determined to interfere with a view. Further, the Board could not create an exception (by means of a rule) for palm trees, simply because it preferred palm trees to views.


Homeowner was a self-described "world renowned Homeopathic Nutritionist and religious counselor" who resided in a homeowners association. When he became ill, he transferred his practice to his home. The association's CC&Rs precluded running a home business unless the Homeowner had both a city license and the consent of the association.

The HOA alleged, in part, that he had seen over 1000 clients in his home in a single year, that many of his neighbors objected to the practice and that he was selling products from his home. When the HOA sought to discipline him, he asked to be able to continue the practice for 6-12 months until he recovered. The HOA refused, fined him, revoked all guest passes, but did allow him to receive and send goods from his home until he could return to his office.

At some point, the Homeowner filed a DFEH action, and received a "right to sue" letter.

The homeowner then filed for a preliminary injunction. He admitted in his papers that he was conducting a home business, but claimed that the Association's refusal to let him do so was discrimination on the basis of disability or religion. The court denied the homeowner's request for an injunction, and he appealed. The DCA affirmed the denial of the injunction. Homeowner had failed to obtain the requisite city and association consents before he began operating out of his house, which meant that there was not a substantial likelihood that he would prevail if the matter went on to trial.


The CC&Rs for Starlight Ridge created a series of landscape maintenance easements (LME) and assigned to the association the responsibility for maintaining those LMEs, including any improvements located thereon. However, the CC&Rs also assigned to the homeowner the responsibility for maintaining the portion of specified "drainage facilities" located on the homeowner's lot.

Hunter-Bloor's portion of the drainage facility (a V-ditch which was part of a storm drain system required by the MWD during development) happened to be located within the landscape maintenance easement area of her yard. She maintained the HOA was responsible for repairing, the HOA contended the V-ditch was the owner's responsibility.

The court focused on how the language of the CC&Rs should be interpreted, and held for the association, that is, that the maintenance of the V-ditch was the owner's responsibility.
The court correctly noted that it was fortuitous that the homeowner's portion of the drainage system happened to be located on the LME in her yard, that for many, many years the documents had been interpreted by the parties and enforced by the association to allocate maintenance of the ditch to the owner rather than the association, and finally, that it would not be fair to make all the other homeowners pay for her portion of the ditch.

II. Americans with Disabilities Act


Birke, a minor, resided in an apartment complex owned and operated by Oakwood Worldwide. While Oakwood had banned smoking in its units and indoor common areas for some time, it continued to allow smoking in outdoor common areas. It also furnished ashtrays, permitted its own agents/employees to smoke in those outdoor areas, and resisted the suggestion of Birke's father to prohibit outdoor smoking. It admitted it had allowed outdoor smoking as a business decision, wanting to market the rentals to an international clientele. Birke sued for public nuisance, and violation of the ADA. In response to defendant's demurrer, the trial court dismissed Birke's complaint without leave to amend, and she appeals.

On appeal, the DCA reversed the dismissal, holding that Birke adequately pleaded a cause of action for public nuisance, and (though not expressly set forth in the complaint) also pleaded facts sufficient to support a cause of action for private nuisance. However, because the housing in question was an apartment complex, an ADA claim could not be pleaded. Case remanded to trial court for further proceedings.


Association's common areas included portions of a large system of trails, some owned by other associations and some by various governmental entities. The trails were intended for horseback riding and trail hiking. In 2007, citing safety concerns, the Association installed barricades to prevent vehicular traffic on its portion of the trail system.

Plaintiff, a disabled person, was neither a member nor a resident of Association. After the barricades were erected, he sought to use the trails by means of a horse-drawn carriage. When he could not do so, he sued the Association alleging violations of the ADA, and state laws dependent on a finding of ADA violation.

The court held that the Association's portion of the trail system was not a public accommodation, because it did not actively encourage public use of the trails: "We do not think [Association's] private trails transform into public accommodations merely because [Association] does not actively exclude members of the public from using the trails."
III. Disclosures


Samuelson sold his condominium unit to Calemine. Prior to that, the development had been involved in a construction defects suit which concerned drainage. Samuelson was the president, and in other years, the treasurer, of the Board, first during the construction defects suit, and later during the remediation work. Samuelson had noted water intrusion into his garage and reported that as part of the CD suit.

The remediation work was not successful, and a second suit was brought against the contractor. After the successful conclusion of the second suit, repairs were made, which concluded in November 1998. After that time, Samuelson did not notice any further flooding or water intrusion in his unit.

Samuelson contracted to sell his unit in 2002. As part of the transaction, Samuelson did disclose there had been flooding and drainage problems, noting water damage and urging buyer to obtain a separate physical inspection from a licensed contractor. Buyers did so, and the inspector noted leakage in garage and at lower levels. Buyers then went to Samuelson for an explanation. He stated "We've had some water intrusion near the bottom of this [garage] wall and through the slab..." He described the association's repairs, and concluded with, "Haven't had a problem since. Problem solved."

Escrow closed in July 2002. In January 2005, the garage flooded, and buyers first learned of the prior CD suit and the repairs.

Plaintiff-buyers filed suit, alleging Samuelson breached a duty to make full and complete disclosures of past actions, that he had failed to disclose he was a member of the board at the time of the second lawsuit, and that he failed to describe the repairs made as a result thereof.

Defendant seller moved for summary judgment, which the trial court granted. On appeal, the court reversed, remanding the matter for trial. The court noted "Samuelson had not disclosed the litigation in the transfer disclosure because he believed he was obligated only to disclose pending actions. Nor did Samuelson ever mention the lawsuits..." The court nevertheless held that the seller was required to disclose the existence of the prior suits concerning water intrusion and repairs. Although the real estate disclosure statement required by Civ. Code 1102.6 might not require the disclosure of past litigation, the common law obligation of a seller to disclose "information materially affecting the value or the desirability of the property..." might require the seller to disclose the past litigation. Because the materiality of that disclosure is a question of fact, not law, the case must be remanded for trial on that issue.
IV. Standing


Plaintiffs' parents bought a house in the community association while the developer was still in construction. The plaintiffs and the parents agreed that the plaintiffs would live in the house and bear all the expenses related to the house and its maintenance. When they noticed their lot was smaller than it was supposed to have been per the purchase documents, the plaintiffs approached the builder (Richmond) who agreed to do two lot line adjustments to increase the size of the lot. Before the lot line adjustments had been completed, however, the developer conveyed the other lots to the Community Association as part of its common area.

The plaintiffs negotiated with the Community Association, and a series of letters indicated the association would allow the lot line adjustment to go through, provided the homeowners pay for the Community Association's legal fees and costs, as well as for the relocation of common area sprinklers.

In reliance on the agreement, plaintiffs invested in fencing, landscaping and additional dirt; they also claimed they could not complete their front yard landscaping in the required amount of time because of delays in completion of the lot line adjustment. The Association cooperated with one lot line adjustment, but not the second. In response, the plaintiffs sued for breaches of the agreement to adjust the lot line, and breaches of the CC&Rs and related rules, violation of the Association's duties to the plaintiffs, and failure to maintain the Association's common areas.

The Association demurred to the complaint on the ground that the plaintiffs were not the owners of the property. On granting leave to amend, the parents substituted in as plaintiffs. The Association then sought entry of judgment against the original plaintiffs, and requested its attorney fees and costs.

The trial court held in favor of the Association on the request for fees and costs, awarding it $29,000+ against the original plaintiffs. On appeal, the judgment was affirmed, in Association's favor, because the plaintiffs lacked "standing" (a legal right to sue.) The claims advanced by the plaintiffs (such as a right to enforce the agreement to expand the size of the lot by lot line adjustment, and the right to enforce the CC&Rs) are claims held only by owners of property. Neither did the plaintiffs have rights as "third party beneficiaries," because there was no evidence that the agreement was made for their benefit.
V. Easements


The Grays and the McCormicks owned adjoining lots in Coto de Caza, a very upscale community near San Juan Capistrano. The CC&Rs had granted the Grays an "exclusive easement" ("an exclusive easement of access, ingress and egress") over McCormick's property, for the purposes of constructing a very long driveway to his home.

The McCormicks were in the habit of using the portion of their lot subject to the easement for moving supplies, walking their horses, moving rubbish and manure.

The Grays contemplated construction of an expensive driveway and wished to exclude the McCormicks from any use whatsoever. The McCormicks contended that under California law, the owner of property subject to an easement may make any use of the easement area not inconsistent with the easement owner's use.

The trial court sided with the McCormicks (allowing them to use the easement.) However, the DCA reversed. The terms of the easement in the CC&Rs were not vague. The CC&Rs clearly contemplated an easement "exclusive" to the Grays, exclusive even of the McCormicks. It was therefore appropriate to bar the McCormicks from any use of the portion of their property subject to the easement.

VI. Debt Collection and Foreclosure


In 1998, the Kachlons sold a house to the Markowitzes, who gave back a promissory note for $53,000, secured by a deed of trust in the Kachlons' favor. Thereafter, there were numerous transactions between the parties (contracting work done by the sellers for the buyers, legal work performed by the buyers for the sellers, transfer of a car, and finally, an affair between seller husband and buyer wife.)

In 2002, things broke down (!) and sellers (Kachlon) began a nonjudicial foreclosure against buyers. The parties entered into a written agreement, dealing with the various cross-claims, resulting in a reduction of the principal amount of the note by $41,000.

Later in 2002, buyer (Markowitz) wanted to get a new line of credit secured by the home. As part of that transaction, the seller's debt was to be paid off. The lender's trustee sent the seller a beneficiary demand. Seller completed and returned it, along with the original promissory note and a request for reconveyance (that is, for surrender of the lien.) The beneficiary demand executed by sellers indicated $12,000 was the balance due on the note. It later turned out that buyer's wife (an attorney) had forged the name of seller-wife on the documents.
Sellers (Kachlons) did receive the amount they had indicated was due, and cashed the check. However, when the trustee later contacted the sellers about the reconveyance, the sellers denied the debt had been fully paid. Sellers then stated that wife's signature had been forged by the buyers. As a result, the escrow did not record the request for reconveyance.

In 2003, the sellers again attempted to foreclose the trust deed. The original trustee refused to proceed, and sellers substituted in a new trustee. The new trustee began foreclosure, even though it only had photocopies of the note (since the original trustee had continued to hold the original note.) Buyer's attorney contacted the new trustee and explained the dispute. New trustee then stopped pursuing the foreclosure, but it did not dismiss the proceeding.

Seller (Kachlon) sued buyer for breaching the home improvement contract and failing to repay personal loans. Buyer (Markowitz) then sued sellers, and the new trustee (and the old trustee) for slander of title and negligence. The cases were consolidated.

While the jury found the new trustee liable, the judge entered judgment in favor of the new trustee "notwithstanding the verdict", exonerating the trustee.

On appeal, the court affirmed judgment for the trustee. The act of mailing, publication, and delivery of notices for nonjudicial foreclosures, and the performance of such other acts as are required by law for nonjudicial foreclosure, are "qualifiedly" privileged. That means, even if the actions turn out to be incorrect, unless there is a showing of malice on the part of the foreclosing entity, those actions cannot serve as the basis for a claim of damages.

VII. Attorney Fees and Costs


Tenants of a low-income housing cooperative sued the managers and board of the housing complex alleging violations of the Davis-Stirling Act and the community's bylaws. The trial court granted summary judgment against the tenants, but refused to award the prevailing party its attorney fees and costs. The trial court based its decision on the fact that the tenant had no money (she was proceeding _in forma pauperis_ and was representing herself.)

The manager and board appealed the denial of fees. However, the DCA ruled that it is appropriate to award no fees where the losing party, despite Davis-Stirling's direction that fees "shall" be awarded to the prevailing party, where an analysis of all the factors, including the losing party's financial condition, indicates that "zero" is the proper amount of fees to award.
LEGISLATION AFFECTING YOUR ASSOCIATION

SUSAN HAWKS McCLINTIC, ESQ.
I. CALIFORNIA LEGISLATION

A. Vetoed Bills

AB 1328 – Five Year Contracts for Water or Energy Efficiency Program
Vetoed

This bill would have added Section 1353.9 to the California Civil Code to allow an association to enter into a contract for a water or energy efficiency program of up to 5 years when the board of directors reasonably anticipated that such a contract would result in verifiable savings to the association.

AB 985 – Require County Recorder, Title and Escrow Companies, etc. to Modify Discriminatory CC&Rs Provisions
Vetoed

AB 985 would have required a county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to a person who holds an ownership interest in the property to also provide a Restrictive Covenant Modification form with specified procedural information to that person if the document contained an unlawful discriminatory provision.

AB 473 -Recycling
Vetoed

This bill would have required an owner of a multifamily dwelling to arrange for recycling services.

B. Two Year Bill

SB 259 – CAI Sponsored Bill – Will Be Considered by Legislators Next Year

An act to amend Section 1363.09 of the California Civil Code so that if a court voids a Board election based on a finding that the election procedures required by the Civil Code and/or the Association’s rules related to Board elections were not followed, the decisions made by that board prior to the election being declared void will not be invalidated unless the court also finds that the action of the board was contrary to law or the governing documents.
C. New Laws

1. AB 285 – Notices to Members by Electronic Transmission

California Corporations Code Section 20, which outlines the requirements that an association must satisfy to communicate electronically with a member or electronically provide a member with a record, currently mandates that the association: 1) obtain an unrevoked consent by the member to communicate via that electronic method; 2) select a method of electronic communication that is capable of being retained, retrieved, reviewed, and rendered into hardcopy form; and 3) satisfy the Electronics Signatures in Global and National Commerce Act.

AB 285 eliminates the requirement that an association satisfy the Electronics Signatures in Global and National Commerce Act when electronically communicating with an officer or director of the association, or a member of the association who is a natural person. However, AB 285 requires that the communication be sent to that person in his/her capacity as an officer, director or member.

To send a communication electronically, the communication must be preceded by or include a written statement to the recipient which includes the following:

(a) outlining his/her right to have the record provided or made available on paper or in non-electronic form;
(b) confirming whether his/her consent to electronic communication applies only to that transmission, to specified categories of communications, or to all communications from the association, and
(c) describes the procedures the recipient must follow to withdraw his/her consent to electronic communication.

2. AB 899 - Electronic Communications, Annual Disclosures and Assessment and Reserve Funding Disclosure Statements

AB 899, which amends Section 1350.7 of the California Civil Code, will require that any agreement to provide documents via an electronic means obtained by an association be consistent with the conditions for obtaining consumer consent described in Section 20 of the California Corporations Code. In other words, an association will have to obtain an unrevoked consent by the member to communicate via that electronic method. Further, the selected method of electronic communication will have to be capable of being retained, retrieved, reviewed, and rendered into hard copy form.

AB 899 will also add Section 1363.005 to the California Civil Code. Section 1363.005 will require associations to distribute to any member, upon the member’s request, the following Disclosure Documents Index:
Disclosure Documents Index

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Reference Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Assessment and Reserve Funding Disclosure Summary</td>
<td>Civil Code Sec. 1365.2.5</td>
</tr>
<tr>
<td>2</td>
<td>Pro Forma Operating Budget or Pro Forma Operating Budget Summary</td>
<td>Civil Code Sec. 1365(a)</td>
</tr>
<tr>
<td>3</td>
<td>Assessment Collection Policy</td>
<td>Civil Code Sec. 1365(e) and 1367.1(a)</td>
</tr>
<tr>
<td>4</td>
<td>Notice /Assessments and Foreclosure (form)</td>
<td>Civil Code Sec. 1365.1</td>
</tr>
<tr>
<td>5</td>
<td>Insurance Coverage Summary</td>
<td>Civil Code Sec. 1365(f)</td>
</tr>
<tr>
<td>6</td>
<td>Board Minutes Access</td>
<td>Civil Code Sec. 1363.05(e)</td>
</tr>
<tr>
<td>7</td>
<td>Alternative Dispute Resolution (ADR) Rights (summary)</td>
<td>Civil Code Sec. 1369.590</td>
</tr>
<tr>
<td>8</td>
<td>Internal Dispute Resolution (IDR) Rights (summary)</td>
<td>Civil Code Sec. 1363.850</td>
</tr>
<tr>
<td>9</td>
<td>Architectural Changes Notice</td>
<td>Civil Code Sec. 1378(c)</td>
</tr>
<tr>
<td>10</td>
<td>Secondary Address Notification Request</td>
<td>Civil Code Sec. 1367.1(k)</td>
</tr>
<tr>
<td>11</td>
<td>Monetary Penalties Schedule</td>
<td>Civil Code Sec. 1363(g)</td>
</tr>
<tr>
<td>12</td>
<td>Reserve Funding Plan (summary)</td>
<td>Civil Code Sec. 1365(b)</td>
</tr>
<tr>
<td>13</td>
<td>Review of Financial Statement</td>
<td>Civil Code Sec. 1365(c)</td>
</tr>
<tr>
<td>14</td>
<td>Annual Update of Reserve Study</td>
<td>Civil Code Sec. 1365(a)</td>
</tr>
</tbody>
</table>

Finally, AB 899 will amend California Civil Code Section 1365.2.5 to require associations to include a specified statement regarding the interest rate earned on their reserve funds and the assumed inflation rate applied to major component repair and replacement costs in their Assessment and Reserve Funding Disclosure Summary.

3. **AB 1233 - Directors**

AB 1233 amends California Corporations Code Sections 7132 and 7150 with regard to amending or repealing an association’s Articles of Incorporation or bylaws when amending or repealing them requires the approval of a person or persons other than the board or members. The amendments make such a requirement inapplicable when the person or persons required to amend or repeal the Articles of Incorporation or bylaws has died or has otherwise ceased to exist. Additionally, the amendments waive the need for such approval when the person or persons required to approve the amendment or revocation receive notice of the same but fail to approve or disapprove the same, in writing, within the period specified in the notice. AB 1233 further specifies that such person or persons must be given no less than 30 days and no more than 50 days to respond to a notice of amendment or revocation once that notice has been provided.
California Corporations Code Section 7211 is amended to explicitly provide that each director present and voting at a board meeting shall have one vote on each matter presented for action at that meeting and that no director may vote at any meeting by proxy.

AB 1233 also:

(a) Amends California Corporations Code Section 7151 to require that Bylaws either set forth the number of directors or the method for determining the number of directors when the number is variable;
(b) Amends California Corporations Code Section 7212 so that board appointed committees that exercise the authority of the board can no longer have members that are not also directors;
(c) Amends California Corporations Code Section 7213 so that the board treasurer is also the chief financial officer of the association unless the articles of incorporation or bylaws state otherwise;
(d) Amends California Corporations Code Section 7220 to specify circumstances when an entitlement to designate a director or directors will cease;
(e) Amends California Corporations Code Section 7220 to state that directors serve until the expiration of the term for which elected and until a successor is elected, unless the director is removed from office;
(f) Amends California Corporations Code Section 7222 to provide that any reduction in the authorized number of directors or any articles of incorporation or bylaws amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office unless the reduction or amendment also provides for the removal of one or more specified directors;
(g) Amends California Corporations Code Section 7222 to provide for the manner in which a designated director or directors can be removed; and
(h) Amends California Corporations Code Section 7231 to provide that a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data prepared by or presented by a committee that that director does not serve on when that committee is composed exclusively of any combination of directors, officers or employees of the association whom the director believes to be reliable and competent in the matters presented and legal counsel, independent accountants or other persons regarding matters that the director believes to fall within their area of professional or expert competence. The matters must fall within the committee’s area of authority and the director must have confidence in the committee’s information, opinions, reports or statements. Further, the director must act in good faith and undertake reasonable inquiry as the circumstances warrant. Finally, the director cannot have any knowledge that would cause him/her to suspect that reliance on the committee’s information is unwarranted.
4. **AB 1020 - Swimming Pools/Drains**

AB 1020 will amend Health and Safety Code Section 18942 and add Sections 116064.1 and 116064.2. AB 1020 will require an existing public swimming pool to be equipped with anti-entrapment devices or systems that meet ASME/ANSI or ASTM performance standards. Further, it will require that an existing public swimming pool containing a single main drain that is not an unblockable drain meets at least one of the following devices or systems that are designed to prevent physical entrapment by pool drains:

- (a) A safety vacuum release system that meets specific requirements;
- (b) A suction-limiting vent system with a tamper-resistant atmospheric opening, provided that it conforms to any applicable ASME/ANSI or ASTM performance standard that has been adopted by the State Department of Public Health;
- (c) A gravity drainage system that utilizes a collector tank, provided that it conforms to any applicable ASME/ANSI or ASTM performance standard that has been adopted by the State Department of Public Health;
- (d) An automatic pump shut-off system tested by a department-approved independent third party and found to conform to any applicable adopted ASME/ANSI or ASTM performance standards;
- (e) Any other system that is deemed, in accordance with federal law, to be equally effective as, or more effective than, the systems described in paragraphs (1) to (4), inclusive, at preventing or eliminating the risk of injury or death associated with pool drainage systems.

AB 1020 will also require that every newly constructed public swimming pool have at least 2 main drains per pump that are hydraulically balanced and symmetrically plumbed through one or more “T” fittings, and that are separated by a distance of at least 3 feet in any dimension between the drains.

AB 1020 will authorize the State Department of Public Health to approve amendments or successors to these standards, as well as to develop a form that the owners of public swimming pools will need to have certified by a qualified individual attesting to their compliance with the bill.

AB 1020 will authorize the State Department of Public Health, until January 1, 2014, to assess a fee in an amount to be prescribed, but not to exceed $6, to defray the department’s costs of carrying out its duties under the bill. Each local health department would be required to bill the owners of each public swimming pool in its jurisdiction.

Any violation of the requirements found in AB 1020 will constitute a misdemeanor crime.

5. **AB 313 – Assessments Based on Taxable Value**

AB 313, which adds Section 1366.4 to the Davis-Stirling Act, will prohibit an association from levying assessments on separate interests within the common interest development
based on the taxable value of the separate interests unless the association, on or before December 31, 2009, in accordance with its declaration, levied assessments on those separate interests based on their taxable value. The taxable value of the separate interests will be determined by the tax assessor of the county in which the separate interests are located.

This act will exempt associations that are responsible for paying taxes on the separate interests within their developments.

6. AB 83 – Good Samaritan Law

Effective Immediately

Previously, Health and Safety Code Section 1799.102 provided that any person who in good faith, and not for compensation, rendered emergency medical care at the scene of an emergency would not be liable for any civil damages resulting from any act or omission in providing that care.

This act amends Health and Safety Code Section 1799.102 so that it now provides that any medical, law enforcement, and emergency personnel who in good faith, and not for compensation, render emergency medical or nonmedical care at the scene of an emergency shall not be liable for any civil damages resulting from any act or omission in providing that care.

Additionally, Section 1799.102 is amended so that it provides that any person, not including medical, law enforcement, and emergency personnel, who in good faith, and not for compensation, renders emergency medical or nonmedical care or assistance at the scene of an emergency shall not be liable for any civil damages resulting from any act or omission in providing that care or assistance, provided that the act or omission does not constitute gross negligence or willful or wanton misconduct.

7. SB 39 – Protection for Disaster Workers

Emergency Legislation- Effective Immediately

This act amends California Civil Code Section 1714.5.

Previously, this section provided that no disaster worker who performed disaster services during a state of war emergency, a state of emergency, or a local emergency would be liable for civil damages due to the injury or death of any person and/or damage to any property related to that service.

Section 1714.5 now limits this protection to disaster service workers who are acting within the scope of their responsibilities as set forth by the applicable governmental emergency organization. However, this section does not protect disaster service workers who willfully cause injury or death to any person or damage to property.
8. **AB 5 – Discovery of Electronically Stored Information**

**Emergency Legislation – Effective Immediately**

This act both amends and adds sections to the California Code of Civil Procedure relating to civil discovery (i.e., the portion of the California Code of Civil Procedure known as The Civil Discovery Act).

The Civil Discovery Act grants a party to a civil action the right to obtain certain documents, tangible things and property via discovery.

This act establishes procedures by which a party can also obtain discovery of electronically stored information (e.g., e-mails, tapes, CDs, files on computer hard drives) in the possession of any other party to the lawsuit. Further, the act allows discovery by means of copying, testing, or sampling in addition to inspection of electronically stored information.

Other significant features of this act include:

(a) The ability of the parties to a lawsuit to agree to extend the time period in which the requested electronic discovery may be produced, as well as to extend the date for the inspection, copying, testing and/or sampling of the same.

(b) The requirement that any electronic documents produced in response to an inspection demand be produced as they are kept in their usual course of business, or to be organized and labeled to correspond with the categories of the demand.

(c) The ability of the responding party to state in its response to a request for production of electronically stored information the form in which it intends to produce each type of information if the party requesting the production of the electronically stored information failed to specify the manner in which the information should be provided or the responding party objects to the manner in which the information was requested to be provided. (Generally, if the form that electronically stored information is to be provided is not specified, the receiver of the demand is expected to produce the information in the form or forms that it is ordinarily maintained in or in a form that is reasonably usable.)

(d) The requirement that if the party responding to a demand for production, inspection, copying, testing or sampling of electronically stored information seeks a protective order regarding the same, or otherwise objects or opposes the demand on the grounds that the information is not reasonably accessible because it is unduly burdensome or expensive to produce, that party must demonstrate the truth of that claim. However, it is important to note that the
court may still require the production of the information if the demanding party shows that the information is needed.

(e) The waiving of the sanctions that would normally be levied against the responding party and/or its attorney for failing to provide discovery when the electronically stored information that was demanded has been lost, damaged, altered, or overwritten as a result of the routine, good faith operation of an electronic information system.

9. **ACR 49 – Authority of California Law Revision Commission to Continue Studying Common Interest Development Law**

ACR 49 authorizes the California Law Revision Commission to continue to study whether the law governing common interest housing developments should be revised to: 1) clarify the same; 2) eliminate unnecessary and obsolete provisions; 3) consolidate the law into one area of the California Code of Regulations; 4) provide a clear, consistent and unified policy with regard to the formation and management of such developments, as well as transactions involving real property interests within the same; and 5) determine to what extent the law should be subject to regulations.

ACR 49 also authorizes the California Law Revision Commission to study whether the law related to covenants, servitudes, conditions and restrictions on land use or related to land should be revised.

10. **AB 927 – Extends Civil Code Section 1375 re Construction Defect Litigation (Calderon Notice)**

This act amends California Civil Code Section 1375, relating to construction defect litigation for common interest developments.

Section 1375 originally provided that, until July 1, 2010, an association had to satisfy certain requirements before it could file a lawsuit against the development’s builder, developer, or general contractor claiming defects in the design and/or construction of the same. Those requirements included: 1) filing a notice regarding the commencement of legal proceedings; 2) first participating in a dispute resolution process; and 3) preparing a case management statement for the court.

This act changes the expiration date for Section 1375 from July 1, 2010 to July 1, 2017.

11. **AB 1061 – Water Efficient Landscaping**

This act repeals and replaces Section 1353.8 of the California Civil Code relating to water efficient landscaping in common interest developments.

This act makes void and unenforceable any provision of a common interest
development’s governing documents that have the effect of: 1) prohibiting the use of low water-using plants as a group or 2) of prohibiting or restricting compliance with any local water efficient landscape ordinance or water conservation measure adopted pursuant to Section 65595(c) of the Government Code or Section 353 or 375 of the Water Code.

12. **SB 407 – Water Conserving Plumbing Fixtures**

SB 407, which relates to water conservation, adds Section 1102.155 and Article 1.4 to Chapter 2 of Title 4 of Part 4 of Division 2 of the California Civil Code.

This act requires that as of January 1, 2014, any plumbing fixtures that are not water conserving located in a single family residential real property that was built and available for occupation on or before January 1, 1994, be replaced with water conserving fixtures as a condition of issuance of a certificate of final completion and occupancy or final building permit for any building alteration or improvement. This act further requires that on or before January 1, 2017, all noncompliant plumbing fixtures in any single-family residential real property be replaced by the property owner with water-conserving plumbing fixtures.

Under this act, all non-water conserving plumbing fixtures in multifamily residential real property and commercial real property must also be replaced with water-conserving plumbing fixtures on or before January 1, 2019. Further, as of January 1, 2014, the replacement of non-water conserving plumbing fixtures will be required before a building permit or certificate of final completion and occupancy will be issued for certain alterations or improvements to multifamily residential and commercial real property.

As of January 1, 2017, this act will require all sellers or transferors of a single-family residential, multi-family residential or commercial real property to disclose to the purchaser or transferee, in writing, the requirements for replacing plumbing fixtures, and the existence of any noncompliant (i.e., non water conserving) plumbing fixtures.

This act authorizes an owner or the agent of an owner to enter his/her rental property for the purpose of installing, repairing, testing, and maintaining water-conserving plumbing fixtures. Further, the act requires that that the water-conserving plumbing fixtures prescribed by the bill operate at the manufacturer’s rated water consumption at the time that a tenant takes possession as of as of January 1, 2019.

Finally, this act authorizes city, county and retail water suppliers to enact local ordinances or policies that promote compliance with the act’s provisions or that would result in greater water savings than otherwise provided by the act. Those that adopt an ordinance requiring retrofit of noncompliant plumbing fixtures prior to July 1, 2009, would be exempt from the act’s requirements for as long as the ordinance remains in effect.

13. **SB 306 – Notice of Default**

This act amends California Civil Code Sections 2923.5, 2923.6, 2924.8 and 2924f. It
also amends, repeals and adds California Civil Code Section 2943 amends Financial Code Section 17312.

When there is a breach of the obligation of a mortgage or transfer of an interest in property, existing law mandates that the trustee, mortgagee, or beneficiary record a notice of default in the county where the mortgaged or trust property is situated and mail notice of the default to the mortgagor or trustor. Additionally, the law prohibits a mortgagee, trustee, beneficiary, or authorized agent from filing a notice of default for an additional 30 days on loans made between January 1, 2003 and December 31, 2007, that secure residential real property, under certain circumstances. This prohibition expires January 1, 2013. Under SB 306, these provisions apply to mortgages and deeds of trust entered into during this same period secured by owner-occupied residential real property containing no more than 4 dwelling units. Further, this act revises the declaration that is required to be filed with a notice of default.

SB 306 makes additional findings regarding the duty of loan servicers and the declarations they are required to make to certain parties.

Currently, a trustee or authorized agent, upon posting a notice of sale, must post and mail a specified notice addressed to the residents of the property subject to foreclosure. Further, current law mandates that at least 14 days prior to the date of sale, a notice of sale be recorded. SB 306 specifies how and when this notice is to be mailed. The act also extends to 20 days the period in advance of the date of sale that the notice of sale must be recorded.

The law requires a beneficiary on a deed of trust or a mortgagee on a mortgage to prepare and deliver a beneficiary statement or a pay-off demand statement within 21 days of receipt of a written demand from certain parties. Further, the law requires this written statement to include information reasonably necessary to calculate the payoff amount on a per diem basis for the period of time, not to exceed 30 days, during which the per diem amount is not changed by the terms of the note.

Until January 2014, SB 306 would require a beneficiary to prepare and deliver a written short-pay demand statement, conditioned on the existence of a short-pay agreement, within 21 days of the receipt of a short-pay request. This short-pay demand statement must provide an amount less than the outstanding debt, together with any terms and conditions, under which the beneficiary would execute and deliver a reconveyance of the deed of trust securing the note that is the subject of the short-pay demand statement.

SB 306 provides that a short-pay agreement is an agreement in writing in which the beneficiary agrees to release its lien on a property in return for payment of an amount less than the secured obligation. SB 306 permits a beneficiary that elects not to proceed with the transaction that is the subject of the short-pay request to refuse to provide a short-pay demand statement. However, he/she must instead provide a written statement that indicates that the beneficiary has elected not to proceed with the sale.

Finally, SB 306 provides that if the terms and conditions of a short-pay agreement mandate that the beneficiary approve the closing statement prepared by the escrow
holder, the beneficiary must approve or disapprove the closing statement within 4 days of receipt of the same. If not approved or disapproved within this time period, the closing statement shall, in most cases, be deemed approved.

14. **SB 583 – Sex Offender Registration**

SB 583 requires the Department of Justice to record each address at which a registered sex offender resides with a description of the dwelling type i.e., condominium, apartment, etc., as of January 1, 2012. Further, SB 583 requires, commencing January 1, 2012, the Department of Justice to maintain those classifications within the database maintained for sex offender registrations and to provide that information to other state agencies when needed for law enforcement investigative purposes related to sex offenders.

15. **AB 1246 – Limited Equity Housing Coops**

AB 1246 amends Business and Professions Code Section 11003.4, California Civil Code Section 1351 and California Health and Safety Code Sections 33413.7 and 50073. Further, this act adds Chapter 5 (commencing with Section 817) to Title 2 of Part 2 of Division 2 of the California Civil Code and repeals California Health and Safety Code Section 33007.5

AB 1246:

(a) Revises the definition of a “limited-equity housing cooperative” so that the term also applies to a workforce housing cooperative trust.

(b) Exempts a “limited-equity housing cooperative” from the provisions governing the regulation of transactions of subdivided land if, among other organizations, the Federal Home Loan Bank System or any of its member institutions and school districts directly finance or subsidize at least 50% of the total construction or development cost or $100,000, whichever is less.

(c) Exempts a “limited-equity housing cooperative” from these provisions if the real property to be occupied by the cooperative was sold or leased by the Department of Transportation, other state agency, a city, a county, or a school district for the development of the cooperative and has a regulatory agreement.

(d) Generally prohibits a board from returning transfer value, either full or partial, to a member of the board while he or she still remains a member of the board, and prohibits an existing member of the board from accepting the return of his or her transfer value, either full or partial.

(e) Authorizes a prevailing plaintiff to recover his/her reasonable attorneys’ fees and costs in a suit against a board and its members for breach of corporate or fiduciary duties or a failure to comply with the requirements outlined in Chapter 5 of the California Civil Code.

(f) Prohibits an organization formed under the act that uses public funds from using any corporate funds to avoid compliance with this act, and from pursuing dissolution if the intent or outcome is for the members to receive any
payment in excess of the transfer value to which he or she is entitled, pursuant to law.

(g) Imposes procedural requirements relating to the dissolution of a limited-equity housing cooperative or workforce housing cooperative trust that receives or has received a public subsidy.

(h) Provides for the manner in which a workforce housing cooperative trust is organized and operated.

16. **SB 23 – Emergency Preparedness in Mobile Home and Manufactured Housing Communities**

The owner or operator of a mobile home park or manufactured home community (this includes converted parks) must communicate to residents essential evacuation routes and basic emergency preparedness information in a manner appropriate to the community. This emergency preparedness plan must be adopted on or before September 1, 2010. The Bill states that it is not the intent of the Legislature that an owner or operator be responsible for physically evacuating residents from their homes during an emergency. It is further the intent that residents take personal responsibility for themselves during an emergency.

17. **SB 111 – Mobile Home Residency Law**

The provisions are reorganized and some technical changes are made.

18. **AB 32 – Public Display of Public Officials’ Information**

AB 32, which amends Section 6254.21 of the Government Code relating to public records, requires a person, business, or association, upon receiving the written demand of an elected or appointed official, to remove the official's home address or telephone number from public display on the Internet within 48 hours of the delivery of the demand, and to continue to ensure that the information is not reposted on any site maintained by the recipient of the written demand.

19. **SB 833 – Fire Protection in High Fire Hazard Zones**

SB 833 will amend Sections 51177 and 51182 of the Government Code to require that a person who owns, leases, controls, operates, or maintains an occupied dwelling or occupied structure on or adjoining a mountainous area, forest-covered land, brush-covered land, grass-covered land, or land that is covered with flammable material that is within a very high fire hazard severity zone, as designated by a local agency, to maintain a defensible space of 100 feet from each side and from the front and rear of the structure. This bill will apply to corporations as well as individuals. The provisions in this bill will take priority over any maintenance or landscaping provisions in a community association’s governing documents that do not meet the maintenance
standards in this bill.

SB 833 will also provide that state law, local ordinances and regulations and insurance companies that insure occupied dwellings and structures may require a defensible space of greater than 100 feet.

Because a violation of these provisions will be a crime, the bill will impose a state-mandated local program.

20. **AB 457 – Mechanic’s Liens**

AB 457 will amend California’s mechanic's lien laws to give property owners, including community associations, more effective notice when a lien holder records a lien against the owner's property for payment on a private work of improvement. This bill will require the lien holder to serve the property owner or reputed owner (or the construction lender or the original contractor if those parties cannot be served) with a Notice of Mechanic's Lien as a condition of recording a lien. The Notice of Mechanic’s Lien must contain information on the legal effect of the lien and steps the owner may wish to take. The bill will require the person serving the Notice of Mechanic’s Lien to complete and sign a proof of service affidavit.

AB 457 will also provide that a failure to serve the mechanic's lien and the Notice of Mechanic's Lien as required would cause the mechanic's lien to be unenforceable as a matter of law.

This bill will also require the lien holder to record a *lis pendens* (notice of pendency of action) before filing a complaint to foreclose upon a mechanic’s lien. This changes the existing law which provides that recording a *lis pendens* is permissive.


SB 209 will amend Section 55.54 of the Civil Code, relating to construction-related disability access claims. This bill will apply to those community associations that have common area that qualifies as a place of public accommodation.

SB 209 will expand the confidential nature of the Certified Access Specialist inspection report that a defendant is required to file in such a case. This bill will require the inspection report to remain confidential throughout the initial 90-day stay until the conclusion of the claim, unless there is a showing of good cause by any party. The confidentiality of the inspection report will terminate at the conclusion of the claim, unless the owner of the report obtains a court order to seal the record. Currently, the law provides that the inspection report be filed under seal and is subject to a protective court order which the court may lift at the conclusion of the 90-day stay.
SB 209 will allow disclosure of the report only to the parties to the action, the parties' attorneys, those individuals employed or retained by the attorneys to assist in the litigation, insurance representatives and others involved in the evaluation and settlement of the case, as specified.

22. **AB 123 – Housing for Elderly or Disabled Persons**

AB 123 will amend Sections 1505, 1568.03, and 1569.145 of the Health and Safety Code, relating to community care facilities. The California Community Care Facilities Act requires community care facilities, as defined, to meet certain licensing standards. However, existing law exempts housing for elderly or disabled persons that are approved and operated under the federal law from licensing requirements applicable to community care facilities, residential care facilities for persons with life-threatening illness, and residential care facilities for the elderly.

This bill will exempt housing occupied by elderly or disabled persons under a regulatory agreement pursuant to these provisions of federal law, and would also exempt housing that qualifies for a low-income housing credit or is subject to the requirements for dwellings for low-income families, and that is occupied by elderly or disabled persons, or both.

23. **AB 515 – Collateral Recovery: Tow Vehicles**

AB 515 amends various sections of the Collateral Recovery Act and Vehicle Code, relating to impounding vehicles. This bill will affect law enforcement agencies that impound vehicles, vehicle impound facilities, and owners of impounded vehicles. Although AB 515 amends Vehicle Code Section 22658, which provides the rights and obligations of a community association in towing vehicles from private property, the change primarily affects the towing agency and owner of the impounded vehicle.

AB 515 will limit a repossession agency's liability for damages to a vehicle as a result of electrical failure, allow the impound of any tow vehicle used to violate the Collateral Recovery Act, clarify lighting requirements for towed vehicles, require law enforcement agencies to be open, as specified, to issue impound releases without the necessity of making an appointment, and require impound agencies to accept a valid bank credit card or cash, as specified.

24. **AB 712 – Small Claims Court: Equitable Relief**

AB 712 amends Section 116.220 of the Code of Civil Procedure to provide a small claims court with jurisdiction over an action for an injunction or other equitable relief, where a statute expressly authorizes a small claims court to award equitable relief.

AB 712 will have a direct effect on those provisions in the Davis-Stirling Common Interest Development Act that permit equitable relief in small claims court as a remedy. For example, Section 1365.2(f) of the Civil Code authorizes a person to bring an
injunctive action in small claims court to inspect and copy association records. Section 1363.09 of the Civil Code authorizes injunctive relief actions regarding association-related elections to be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court. Once enacted, the small claims court will have jurisdiction over the above types of claims and will be authorized to order declaratory or injunctive relief to enforce these (and other) Sections.

AB 712 will also provide that nothing in its provisions is intended to expand, or to encourage the expansion of, the jurisdiction of the small claims court.

25. **AB 975 – Water Corporations: Water Meters**

AB 975 will require water corporations regulated by the Public Utilities Commission (“PUC”) that serve 500 or more customers to install water meters on all new service connections as of January 1, 2010, and on all unmetered customers by January 1, 2025. This bill will require a water corporation to recover the cost of providing services related to the purchase, installation, operation, and maintenance of water meters in rates, fees, or charges to the consumer, subject to the PUC’s approval.

This bill will further require each water corporation that has installed water meters, that is not subject to specified requirements of the Water Measurement Law, on and after January 1, 2015, to charge customers for potable water based on the actual volume of deliveries, as measured by the water meter. However, the bill authorizes the water corporation to delay imposition of volume-based water service charges for one annual billing cycle to provide customers with experience with those charges.

AB 975 will apply to investor-owned water corporations, as opposed to municipally-owned water agencies.

26. **SB 251 – Housing and Community Development: Housing Omnibus Bill**

SB 251 combines multiple, non-controversial changes to statutes into one bill.

SB 251 revises a Subdivision Map Act exemption relating to the conversion of community apartments and stock cooperatives to condominiums by replacing the existing 75 percent owner occupancy requirement to show that no single owner controlled more than 49 percent of the units on the relevant date. (Government Code § 66412).

SB 251 amends Sections 65584.05 of the Government Code and will require the council of governments to submit its final allocation plan to the department within 3 days of adoption. The bill specifies that the department determines whether the plan is consistent with the existing and projected housing need for the region within 60 days from the date of its receipt of the final allocation plan adopted by the council of governments.

SB 251 amends Section 18031.7 of the Health and Safety Code to provide that, in the event of a sale of a manufactured or mobile home, as specified, the homeowner or
contractor responsible for the installation of the home shall make sure that all fuel-gas-burning water heater appliances are seismically braced, anchored, or strapped consistent with the law. This requirement is satisfied when the homeowner or responsible contractor signs a declaration stating each fuel-gas-burning water heater is secured as required.

SB 251 amends Section 18062.9 of the Health and Safety Code and authorizes a manufactured home manufacturer to sell manufactured homes, as defined, directly to a nonprofit affordable housing developer, as defined, when specified conditions are met.

27. **AB 474 – Contractual Assessments for Water Efficiency Improvements**

AB 474 amends Sections 5898.12, 5898.14, 5898.20, 5898.21, 5898.22, 5898.24, 5898.28, and 5898.30 of, and adds to Section 5898.31, the California Streets and Highways Code relating to contractual assessments and water efficiency improvements.

This bill expands existing laws which authorize public agencies to enter into voluntary contractual assessments with willing property owners to finance the installation of specified improvements to now include water efficiency improvements that are permanently fixed to residential, commercial, industrial, agricultural or other real property. A voluntary contractual assessment for water efficiency improvements, and the interest and penalties thereon, shall constitute a lien against the property on which it is made until paid.

AB 474 also requires that the public agency record an instrument creating the voluntary contractual assessment, concurrently with a separate document entitled "Payment of Contractual Assessment Required," in the county recorder’s office for the county in which the real property is located.

AB 474 also amends Section 1102.6(b) of the California Civil Code to require additional specified disclosures for a transfer of real property that is subject to a voluntary contractual assessment for water efficiency improvements.

28. **AB 866 – California Earthquake Authority**

AB 866 amends Section 10089.13 of the California Insurance Code relating to the California Earthquake Authority (“CEA”). The CEA is required to issue policies of basic residential earthquake insurance to any owner of a qualifying residential property, as specified. Existing law requires the CEA to annually report, by May 1, to the Legislature and the Insurance Commissioner on its program operations, financial conditions and affairs, rates and rating plans, evaluation of CEA efforts toward making residential property insurance and residential earthquake insurance more available, and other specified requirements.

AB 866 changes the reporting date to August 1. In addition, AB 866 requires the CEA to post its audit report on the CEA Website to increase the public’s access to the
information and to increase transparency of the information.

II. Pending Federal Bills

A. SB 1733

SB 1733 would create the “Clean Energy Jobs and American Power Act.” The stated purposes of this bill include the creation of clean energy jobs, the promotion of clean energy independence from other countries and the reduction of global warming pollution. SB 1733 covers a broad range of topics. Of particular importance to associations however, is the fact that the legislation does not preempt governing document provisions related to solar systems.

B. HR 2454

HR 2454 would create the “American Clean Energy and Security Act.” Unlike SB 1733, this act would create a federal standard governing the installation and maintenance of solar systems in homeowners associations.

III. Federal Housing Administration (FHA) Regulations

Under the proposed regulations, FHA is changing the process for owners and purchasers in a project to be eligible for FHA mortgage insurance. Some of the proposed requirements include:

(a) The spot loan approval process would be replaced by a comprehensive approval process that expires every two years.
(b) Private lenders would now review and underwrite the projects and certify the compliance to FHA.
(c) An annual reserve study will be required.
(d) Reserves must be at least 60% funded to the level called for in the most recent reserve study.
(e) No more than 15% of the units can be more than 30 days past due on their assessments.
(f) At least 50% of the units must be owner-occupied.

IV. Federal National Mortgage Association (FNMA) Guidelines

FNMA adopted new policies in 2008. These policies include the following:

(a) FNMA delegated its project review process to lenders.
(b) At least 50% of the units in established projects must be owner-occupied.
new or newly converted condominium projects, the requirement is 70%. REO units that are for sale and not rented can be counted as owner occupied.

(c) No more than 15% of the units can be more than 30 days past due on their assessments.

(d) If the association’s master property insurance policy for attached units does not cover fixtures, equipment and other personal property inside the units, the owner/borrower must obtain an HO-6 policy.

(e) Lenders no longer need to represent and warrant that the project’s legal documents comply with certain legal requirements. If lenders use FNMA’s PERS service to review the loan, then the lender must provide an attorney’s certification letter.
TABLETOP TOPICS
FRONT OF ROOM
(Tables in alphabetical order from left to right)
2009 Symposium Tabletop Topics

THERE WILL BE THREE 20 MINUTE SESSIONS
PLEASE NOTE THAT THERE WILL BE NO STANDING AROUND TABLES

<table>
<thead>
<tr>
<th>Attorneys</th>
<th>TABLETOP TOPICS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lori Chotiner</td>
<td>ABC’s of ADR</td>
</tr>
<tr>
<td>Susan Hawks McClintic</td>
<td>Amending Documents</td>
</tr>
<tr>
<td>Linda Adams</td>
<td>Architectural Issues</td>
</tr>
<tr>
<td>Jodi Konorti</td>
<td>Cell Towers</td>
</tr>
<tr>
<td>Debora Zumwalt</td>
<td>Collection Issues</td>
</tr>
<tr>
<td>Doug Rafner</td>
<td>Contracting Essentials</td>
</tr>
<tr>
<td>Mark Rafferty</td>
<td>Construction Defects</td>
</tr>
<tr>
<td>Ben Hong</td>
<td>Developer Transition Issues</td>
</tr>
<tr>
<td>Carrie Timko/Mary Howell</td>
<td>Difficult Directors</td>
</tr>
<tr>
<td>Nancy Sidoruk</td>
<td>Elections/Voting</td>
</tr>
<tr>
<td>Joyce Kapsal</td>
<td>Email Discovery in Litigation</td>
</tr>
<tr>
<td>Rian Jones</td>
<td>Insurance Issues</td>
</tr>
<tr>
<td>Tom Gatlin/Kieran Purcell</td>
<td>Mechanics Liens</td>
</tr>
<tr>
<td>Jay Hansen</td>
<td>Minutes</td>
</tr>
<tr>
<td>Bill Budd</td>
<td>Mold and Water Intrusion</td>
</tr>
<tr>
<td>Steve Banks</td>
<td>Parking Issues</td>
</tr>
<tr>
<td>Vince Sincek</td>
<td>Plans, Maps, &amp; Boundaries</td>
</tr>
<tr>
<td>Jon Epsten</td>
<td>Reserve Issues</td>
</tr>
<tr>
<td>Karyn Larko</td>
<td>Rule Adoption/Enforcement</td>
</tr>
<tr>
<td>Jim Danow</td>
<td>Rental Units</td>
</tr>
</tbody>
</table>
The ABC’s of ADR

By Lori Chotiner, Esq.

Is your Board unsure when or why the Association has to participate in Alternative Dispute Resolution? What does ADR mean? How does it work and what happens if you don’t do it? Join this Q and A session to discuss these and other related issues.

DISCLAIMER: The opinions expressed in the presentations and materials are Epsten Grinnell & Howell’s suggestions and opinions on general legal issues involving community associations and may not be relied upon in addressing any association’s specific legal questions. Your association and management firm may have developed varying and different policies and procedures which fully satisfy all applicable law.
Lori Chotiner
lchotiner@epsten.com

Lori Chotiner received her B.A. from California State University, Northridge. Before earning her law degree from Loyola Law School in 1996, she studied Civil Liberties and Criminal Justice for a summer at Oxford University, United Kingdom. While at Loyola, Lori made the Dean’s List and was a member of the Thomas More Law Honor Society.

Joining Epsten Grinnell & Howell in 2006, Lori offers thirteen years of broad-range experience in complex construction, real estate, commercial and business matters. Currently practicing primarily in real estate and construction litigation, Lori also handles covenant and rule enforcement matters, as well as other litigation matters for homeowner associations, individuals, and other business entities.

Practice areas: real estate and construction litigation, business law, community association counsel.
Amending Documents
By Susan M. Hawks McClintic, Esq.

Were your CC&Rs recorded before you were born? Do your CC&Rs have more provisions about the developer’s rights than about the Association and the owners? Let’s talk about when it is time for amendments.

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Sue Hawks McClintic graduated from the University of Notre Dame Law School in 1983. Originally from Nebraska, Sue joined Epsten Grinnell & Hoowell, APC as an associate in October 1990 and became a shareholder in 1999. Sue currently serves as the supervising attorney for the firm's transactional department.

Although Sue works with community associations on general legal matters, she has developed a special expertise in document amendment and interpretation. Each fall, Sue is a featured speaker at the Epsten Grinnell & Howell Legal Symposium where she educates an audience of more than 500 clients and others on newly passed laws that affect Common Interest Developments.

Sue is past co-chair of the Common Interest Development subsection of The Real Property Section of the California State Bar Association. She regularly participates in seminars and contributes to newsletters and other publications. She has also served as a consultant to review proposed chapters of books to be published by Continuing Education of the Bar (CEB), a branch of the California State Bar Association.

Practice Areas: community association counsel
**Architectural Violations**

**By Linda L. Adams, Esq.**

Have you noticed construction being performed on the exterior of a home without architectural procedures having been followed? Have multiple owners begun making small exterior changes to their homes/units without approval of the Board or Architectural Committee? How could such unapproved changes affect the value of the homes within your community? What can Board Members and Managers do to correct these problems? What are some of the best ways to handle these situations? Get the answers to these questions and more.

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Linda L. Adams  
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Linda L. Adams received her J.D., with distinction, from Pacific Coast University School of Law in 1984 and was class Valedictorian. She is a native Californian and currently resides in the Inland Empire. Prior to and during law school, she was employed as a legal assistant and paralegal, specializing in large litigation cases. She commenced her career as an attorney in 1985 and was a principal for twelve years in the Orange County office of the Los Angeles firm of Spray, Gould & Bowers.

Since joining Epsten Grinnell & Howell in 2000 as Manager of the Inland Empire office, her work has included general association corporate matters, including litigation and enforcement of governing documents. She has expertise in resolving homeowner association disputes, including obtaining restraining orders when necessary.

Linda also works with the firm’s construction defect litigation unit and performs civil litigation involving community associations. She has considerable court and jury trial experience and has handled over 100 judicial arbitrations. Linda is an active member in the Greater Inland Empire Chapter of the Community Associations Institute (CAI) and is serving on CAI’s Board of Directors. She received the Volunteer of the Year Award in 2001 and has served several years as both a CAI-GRIE Delegate and Liaison to the California Legislative Action Committee (CLAC)

She is a member of the California State Bar Association, Animal League Defense Fund, and is admitted to practice before the Central and Southern U.S. District Courts.

Practice Areas: community association counsel, civil litigation
Cellular Tower Leases Over Common Area:
To Lease or Not To Lease?

By Jodi A. Konorti, Esq.

Has a cellular telephone or other communications company ever requested that your association enter into a lease to install its communications equipment on common area? If so, does the association’s board of directors have the authority to enter into such an agreement? What are some of the advantages and disadvantages of entering into a cellular tower agreement?

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Jodi A. Konorti
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Jodi A. Konorti graduated from California Western School of Law in 2005. Jodi originates from Vancouver, British Columbia and holds her Bachelor of Arts degree in Criminology from Simon Fraser University in Vancouver. While at California Western, Jodi served on the Board of Editors as Executive Lead Articles Editor for the California Western Law Review and International Law Journal and was an Honors Instructor for Legal Skills I. Jodi also served as a Judicial Extern to Justice Alex C. McDonald in the California Court of Appeal, Fourth District, Division One.

After passing the California State Bar in 2005, Jodi acted as Associate General Counsel for one of San Diego’s largest real estate brokerages, until she moved to private practice. Jodi has practiced in the area of real estate law where she represented real estate brokers, agents, and private parties in transactional and litigation matters, including landlord-tenant disputes, residential and commercial real property purchase and sale disputes, residential and commercial lease disputes, and easement disputes.

Jodi is a member of the State Bar of California, the American Bar Association, and the Real Estate and Young/New Lawyers Divisions of the San Diego County Bar Association. Jodi is also a licensed California real estate Broker and a member of the Urban Land Institute.

Practice areas: community association counsel
Collection Issues

By Debora M. Zumwalt, Esq.

What is the status of the foreclosure crisis? How can we best deal with it until it eases up? Any tips for abiding by the multitude of Civil Code requirements related to assessment collection? Get the answers to these questions and more.

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Mark R. Raftery
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Mark Raftery received his B.A. in political science from the University of California, Santa Barbara, with highest honors at graduation in 1978. He obtained his law degree from the University of California, Davis School of Law in 1981. During law school, Mark served as Associate Managing Editor of the U.C. Davis Law Review. He was also named Outstanding Oral Advocate in the Neumiller Moot Court competition. After law school, Mark served as a judicial clerk for the Hon. Donald Burnett, Jr., of the Idaho Court of Appeals.

Joining Epsten Grinnell & Howell in 2007, Mark offers more than twenty years experience in the areas of real estate and construction, construction defect, and commercial litigation. He has successfully tried numerous jury and bench trials, arbitrations, and administrative proceedings.

Active in the community, Mark is a Director and former President of the Foothills Bar Association in El Cajon. He has served on the Board of Management of the East County Family YMCA since 2003. In addition, he was an Assistant Scoutmaster, Troop 959, Boy Scouts of America (San Carlos), and an active participant in Mt. Helix Toastmasters, a club devoted to improving leadership qualities and public speaking skills in adults.

Mark is a member of the American Bar Association, the State Bar of California, the San Diego County Bar Association, Association of Business Trial Lawyers, and the Consumer Attorneys of San Diego.

Practice areas: real estate, construction, construction defect litigation, commercial litigation
Developer Transition Issues

By Benjamin J. Hong, Esq.

We just had our first annual meeting, now what? What are Class A, Class B, and Class C members? How long can a developer continue appointing directors? Does the developer owe the association assessments? How do we know what property our new Board must maintain, and how? What if the developer turned the project over to the owners but didn’t complete all the phases? Get the answers to these questions and more.

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Benjamin J. Hong
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Ben Hong received his J.D. from Stetson University College of Law in St. Petersburg, Florida, graduating *cum laude* in 2002. He completed his undergraduate work earning a B.A. degree in marine science from the University of Hawaii and a B.A. degree in communication sciences from the University of Connecticut. While at Stetson University, Ben served on the Student Bar Association actively participating in many committees of the student governing body. He also worked as a law clerk for Justice Anstead in the Florida Supreme Court through a selective program at the law school. He commenced his law career in Florida specializing in insurance litigation, where he worked until 2005 before moving to California. Since joining Epsten, Grinnell & Howell, his practice areas include community association law and document amendment and preparation.

Ben is a member of the California State Bar, Hawaii State Bar, and Florida State Bar, and is admitted to practice before the U.S. District Courts for the Southern District of California and the Middle District of Florida. Ben enjoys scuba diving and skiing.

Practice Areas: community association counsel, document amendment and preparation
Difficult Directors

By Mary M. Howell, Esq. / Carrie M. Timko, Esq.

Do you know a board member who is intent on “doing his own thing” without the approval of the rest of the board? How do a rogue board member’s actions affect the association? What do you do when a board member takes a position adverse to the association? Get the answers to these questions and more.

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Carrie M. Timko
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Carrie Timko was born and raised in Warren, Ohio and graduated *magna cum laude* with a Bachelors of Business Administration from Kent State University in 2000. After being awarded a full scholarship to Stetson University College of Law in St. Petersburg, Florida, she graduated *cum laude* in December 2002 with her Juris Doctor. Carrie also earned her Master of Business Administration from Stetson University in 2002.

While practicing in Florida, Carrie was a certified county court mediator and worked in the field of insurance defense litigation, specializing in fraud cases. After relocating to Southern California, Carrie resumed work in the field of insurance defense, and also practiced in personal injury. She is currently a member of the Hawaii and California State Bars.

Joining Epsten Grinnell & Howell in 2007, Carrie offers a diversified background and an established standard of excellence in client service.

Practice areas: community association law, general civil litigation
Mary M. Howell
mhowell@epsten.com

Mary Howell graduated from the University of California, San Diego in 1972 with a B.A. in biology. She is a 1976 graduate of the University of San Diego School of Law. In practice in San Diego since December of that year and now a shareholder in the law firm of Epsten Grinnell & Howell, APC., Mary is primarily involved with the representation of homeowner associations. Clients include associations and developments in San Diego, Riverside, and Orange counties. In addition to counseling associations on interpretation and enforcement of governing documents, Mary's case work on behalf of associations encompasses litigation of CC&R enforcement cases, appellate representation, defense of homeowner associations (e.g., breach of fiduciary obligation, wrongful termination, failure to maintain) and actions for declaratory relief.

Mary has also been an adjunct professor of law at Thomas Jefferson School of Law, and has authored texts for attorneys on federal and state law relating to senior communities, as well as numerous articles and handbooks for homeowner associations, including "Small Claims Court for Homeowner Associations," and the "Resource Manual for California Senior Communities." Mary has also served as a Judge Pro Tem for San Diego County's Municipal and Small Claims courts, and has appeared in various cases as an expert witness on homeowner association issues.

In 1994, 1996, 1997 and 1999, Mary was recognized for her practice in this area by her appointment as an instructor for the California State Bar's Continuing Education of the Bar series on Homeowner Associations. Mary is also a past president of the San Diego Chapter of the Community Associations Institute (CAI) and a member of the College of Community Association Lawyers. Mary has been the editor of CAI's Journal of Community Association Law and a frequent lecturer at CAI's national Community Association Law Seminar.

Practice Areas: community association counsel, senior & fair housing, civil litigation
Elections & Voting

By Nancy I. Sidoruk, Esq.

Let’s talk about what’s working – and what isn’t – in the age of election rules and Civil Code Section 1363.03 secret ballots. Why isn’t “just following the statute” enough? How has the “independent third party” inspector helped the election process? How can using a recall meeting “protocol” streamline heated meetings? Are failed annual meeting attempts and recalls breaking your budget? Is the proxy dead? Is electronic voting the way of the future?

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Nancy I. Sidoruk
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Nancy Sidoruk received her B.A. in political science in 1990 from the University of California, Berkeley, where she was an Alumni Scholar. She earned her law degree from the University of La Verne in January 1994, graduating first in her class, and was admitted to the State Bar of California in June 1994. In law school, Nancy was a scholarship student, law review editor-in-chief, moot court oral argument finalist, and honored in real property, torts, family law, criminal procedure and the study of unfair business practices. She was also a 4th District Court of Appeal extern and an intern in law firm and corporate environments.

In 2006, Nancy received her M.B.A. from the University of Redlands, earning a 4.0 GPA and membership in the Whitehead Leadership Society. She also holds a certificate in geographic information systems (GIS). Nancy practiced criminal defense and personal injury law, with an emphasis on settlement negotiation, and taught as an adjunct professor of paralegal studies. She brings practical business experience as a marketing professional in real estate and manufacturing companies, especially serving the community associations industry.

Nancy was editor of the Community Associations Institute - Greater Inland Empire Chapter magazine in 2003 and 2004 and honored as 2003 Committee Chair of the Year. She now serves as Chapter liaison to the California Legislative Action Committee (CLAC) and remains an active member of the Chapter's annual golf event planning committee. A skilled writer, Nancy enjoys authoring articles in trade and general interest publications, and was named Empowered Woman of Leadership by Women in Focus for her efforts as 2001-02 President of the American Marketing Association’s Inland Empire chapter.

Practice areas: community association counsel
The Electronic Discovery Act was signed by Governor Schwarzenegger on June 29, 2009 to address the discovery of Electronically Stored Information ("ESI") during the course of litigation.

Is the Association obligated to produce text and instant messages sent from a manager’s or Board member’s personal cell phone? Is a manager’s or Board member’s personal home computer subject to a subpoena if an email relating to Association business is sent from a home computer? What constitutes an Association record for purposes of a preservation order or litigation hold? Get the answers to these questions and more.

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Joyce Kapsal graduated Phi Beta Kappa from the University of Arizona in 1973 with a B.A. degree in political science. She received her J.D. degree from the University of Arizona College of Law in 1978.

Joyce is licensed to practice law in the states of California and Arizona and has served as a judge pro tem and as an arbitrator in California as well as Arizona. She also acts as a consultant for a newspaper columnist on association matters.

Joyce joined Epsten, Grinnell & Howell in October 2004. In her early years of practice, Joyce served as a research attorney for the San Diego County Superior Court where she honed her research and writing skills, resulting in three published appellate decisions later in her career, all decided favorably to her clients. Since 1985, Joyce has devoted her practice to representing condominium and homeowner associations in all types of litigation matters including CC&R enforcement, transition issues, fair housing and construction defect claims. She also provides general counsel representation to numerous associations on a myriad of association topics and issues.

Practice Areas: community association counsel, construction defect litigation, civil litigation
INSURANCE CLAIMS TO CARRIER

By Rian W. Jones

Types of insurance and what risks are covered:
  CGL, D&O, EPLI, Worker's Compensation

What constitutes a "claim?" When should a claim be reported to your insurance carrier? How to report a claim to your insurance carrier? What to do if the claim is rejected?

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Rian W. Jones
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Rian W. Jones is the supervising attorney of the firm's General Litigation Department. He has over 23 years of experience as a litigator and has tried over 40 Superior Court jury trials. Prior to joining Epsten Grinnell & Howell, Rian was a partner with Lewis, Brisbois, Bisgaard & Smith for 4 years and a partner and trial counsel at Cuff, Robinson & Jones for 13 years. His current practice focuses on litigation involving the enforcement of CC&R's and the defense of homeowner associations and HOA boards for breach of fiduciary duty, failure to maintain, ADA claims and other related litigation, including environmental claims (mold, asbestos, etc.).

Rian attended Brigham Young University and later transferred to Western State University in San Diego (now Thomas Jefferson School of Law) where he received his B.S. (1981) and J.D. (1984) degrees. He was admitted to the California Bar in 1985 and also is admitted to practice before the U.S. District Court for the Southern District of California. He has been a lecturer for various continuing legal education programs dealing with Civil Procedure, Litigation, Depositions and Jury Selection. He has served as a Judge Pro Tem for the San Diego Superior Courts from 2000 to 2006, hearing settlement conferences, and has been an Arbitrator on the Court's approved panel since 1990, having heard and decided over 100 arbitrations in that time.

Rian is a native San Diegan and is active in his community. He has served in the past as a Boy Scout Leader in various capacities including Varsity Team Coach and Explorer Post Advisor. He is currently a member of the Scout Committee for a local Scout Troop. Besides a life-long love for camping and hiking, Rian enjoys travel, photography, and golf. He is also fluent in Italian.
MECHANIC'S LIENS

What is a mechanic’s lien? Who can record a mechanic's lien? When can a mechanic's lien be recorded? How long is a mechanic's lien good? How can I protect against a mechanic's lien? What can happen if a mechanic's lien is recorded? What do I do if I receive a mechanic's lien?

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Kieran J. Purcell
kpurcell@epsten.com

Kieran Purcell graduated from the University of Colorado at Boulder in 1985. After serving seven years in the United States Navy, Kieran joined Epsten Grinnell & Howell as a law clerk while attending California Western School of Law. Upon graduation in April 1995, Kieran became an attorney with the firm where his work on behalf of community associations includes providing advice on all types of corporate matters including litigation, interpretation and enforcement of governing documents and reconstruction issues. He has been a shareholder of EG&H since 2002.

Kieran spent three terms on the Board of Directors of the San Diego Chapter of the Community Associations Institute (CAI), where he served as its President, co-chaired the National Seminar Committee and co-chaired the Golf & Tennis Charity Classic. Currently, Kieran is a California Legislative Action Committee (CLAC) delegate for the San Diego Chapter, co-chairs its CLAC Roundtable and teaches the Common Interest Development Law Course. During his tenure with CAI, Kieran has been awarded the San Diego Chapter’s President’s Award three times, and in 2006 received the Samuel L. Dolnick Lifetime Achievement Award.

A captain in the United States Naval Reserve, Kieran serves with the Commander Third Fleet Joint Forces Maritime Coordination Center in Point Loma, California, and was recently awarded his second Meritorious Service Medal for his work in support of the global war on terrorism. A former President of the San Diego Chapter of the University of Colorado Alumni Association, Kieran currently serves on the University’s National Alumni Board of Directors.

Kieran is a member of the American Bar Association, the State Bar of California, the San Diego County Bar Association and the American Legion, Post 275.

Practice Areas: community association counsel
Thomas S. Gatlin
tgatlin@epsten.com

Tom Gatlin is a shareholder in the law firm of Epsten Grinnell & Howell, APC. Tom graduated from the University of California, Berkeley, with academic distinction in March 1971, and obtained his law degree from Hastings College of Law in May 1975. He was admitted to the California State Bar in December 1975.

Tom worked for several years as the Corporate Counsel and Vice-President of Cygnus Corporation, a management company working exclusively with community associations. While there, he gained extensive experience in legal issues affecting community associations, as well as practical knowledge of how associations are managed, their needs, authority, and limitations from a business point of view.

Tom has extensive experience in community association reconstruction projects following construction defect litigation. Given his background in association management, Tom brings to the firm a unique ability to apply the law to the practical realities faced by an association's board of directors. Tom is a frequent lecturer and an active member of the San Diego and Greater Inland Empire Chapters of the Community Associations Institute, and was recognized as the 1995 Speaker of the Year by the San Diego Chapter.

Practice Areas: community association counsel
Minutes

By Jay Hansen

What absolutely must go in open board meeting minutes? Why?
What absolutely should not be put in open board meeting minutes? Why?
What absolutely belongs in executive board meetings and executive board meeting minutes? Why?
What procedures can you implement in all board meetings to save time?

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John ("Jay") W. Hansen, Jr.

John ("Jay") W. Hansen, Jr.
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Jay Hansen graduated from Wheaton College (IL) in 1967 with a degree in chemistry. After ten years of public school teaching, he obtained his law degree with honors in 1979 from I.I.T./Chicago Kent College of Law. Since then, he has devoted his practice to community association law, first in Illinois until 1985, and in Southern California from 1985 to the present.

Jay has been active as a writer and speaker on community association issues and focuses on issues concerning association meetings, parliamentary law, insurance, contracts, and drafting governing documents. He has taught seminars and a multi-session course for community association board members through local community colleges both in California and Illinois. For an article he wrote on record keeping, Jay received an Editor's Award from the Greater Inland Empire Chapter of the Community Associations Institute in 2003. Jay prepares the firm's annual Resource Book which contains the Davis-Stirling Common Interest Development Act, pertinent sections of the Corporations Code and other relevant statutes applicable to community associations. Jay also prepares a series of checklists that are part of the Resource Book to assist boards and community association managers in fulfilling their statutory duties.

Before moving to California, Jay drafted portions of 1984 amendments to Illinois Condominium Property Act and was one of the authors of the 1985 Historical and Practice Notes to Illinois Condominium Property Act, Illinois Annotated Statutes (Smith-Hurd), West Publishing Company.

Practice Areas: community association counsel
Mold and Water Intrusion

By William H. Budd, Esq.

Mold: Silent killer, or payday for personal injury lawyers and opportunistic "victims"? Add water to a building and let it sit for a few days --you may just find out. What if there is a leak from one unit to another; can you just let them work it out? What should the Association do when the source of water is unknown? What if an Owner will not cooperate with investigation and repairs? When should you make a claim on insurance?

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Bill Budd is a cum laude graduate of Thomas Jefferson School of Law. During law school, Bill was on the editorial staff of the law review, competed as an oral advocate in the American Bar Association moot court competition, and taught a writing seminar for first semester law students for three semesters.

Bill brings a wealth of “hands-on” experience to the practice of law. Prior to attending law school, Bill worked as a community association manager for more than ten years, during which time he attended over 800 board meetings. He also earned the prestigious PCAM designation, demonstrating his commitment to the community association industry.

Bill has extensive experience in all aspects of business and community association management, including construction, maintenance, finance, and personnel matters. He has also testified in Superior Court as an expert witness on community association issues.

Practice Areas: community association counsel, civil litigation
Parking Issues

By Steven Banks, Esq.

Is the association allowed to tow my car in front of my home or driveway? What accommodations does the HOA need to make to comply with FHA regulations? How to enforce parking restrictions?

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Steven L. Banks  
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Steve Banks attended the University of Southern California (USC), where he received a B.A. in political science in 1981. While at USC, Steve served as publicity director of the University Speakers Committee. After working in radio and television broadcasting, Steve obtained his law degree in 1986 from the University of San Diego School of Law, where he was a member of the Law Review and president of Phi Alpha Delta law fraternity.

Steve has considerable experience in both the prosecution and defense of construction defect litigation involving residential, governmental, and commercial structures. His practice areas include product liability, premises liability, personal injury, construction contracts, and business litigation. He is a member of the San Diego County Bar Association. Steve enjoys hiking, camping, and is active in the YMCA Guides program.

Practice Areas: construction defect litigation, civil litigation
Deeds, Plans & Maps

By Vincent J. Sincek, Esq.

Do you know about the documents, other than the CC&Rs, that affect the rights and duties of your association? Do you know how to find them? Do you know what plans are usually used during the construction of your community and how to get copies of them? Do you know what documents a developer is supposed to provide to an association before the project is over? Do you know what a title policy shows about your property and what it leaves out? Get the answers to these questions and more.

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Vince Sincek is a native San Diegan. He received a B.A. in philosophy from the College of San Luis Rey in 1969. Vince’s early career was that of a Licensed Land Surveyor in the State of California. His strong aptitude for mathematics and trigonometry soon propelled him into civil engineering where his land use experience, the recommendations of others in the profession, and the successful completion of a State of California licensing examination earned him the professional designation Registered Civil Engineer. Vince spent fifteen years in the engineering and land use professions, including owning and managing his own firm.

In 1997, Vince earned his law degree cum laude from the University of San Diego School of Law. Joining Epsten Grinnell & Howell (EG&H) in the spring of 1998, his expertise in engineering and land use has enabled him to make valuable contributions to the firm’s real estate and construction law practice areas. Respectfully dubbed the “dirt expert” by his EG&H colleagues, Vince continues to be an important source of knowledge in legal matters involving litigated boundary disputes, drainage, land use and easement issues. He also represents homeowner associations in governance matters.

Practice Areas: community association counsel, civil litigation
Reserves

By Jon H. Epsten, Esq.

Why are reserves necessary? Are reserves required by law? What is the Board’s liability for not funding reserves? Can assessments earmarked to be placed in the reserves be used for operating expenses? Is the Association obligated to prepare and distribute reserve information to its Members? What do those Member disclosures require? How do you address construction defect recoveries in the reserve disclosures? Is published reserve information admissible if the HOA is sued? Is the Board required to approve a reserve funding program at a Board meeting? What is a reserve funding plan? Can the Board borrow from reserves? Can reserves be used to pay for litigation expenses? How often is a reserve study required? Who should the Board hire to perform its reserve study?

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Jon H. Epsten
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Jon H. Epsten is the founding shareholder in the law firm of Epsten Grinnell & Howell, APC. Jon is a native San Diegan who graduated from the University of San Diego and obtained his law degree from Thomas Jefferson School of Law, graduating with scholastic merit.

For years, Jon acted as a community association manager. He has attended over 1,800 association meetings. Jon’s work on behalf of community associations encompasses providing advice on all types of corporate matters including directors’ and officers’ defense, mold and mildew litigation, interpretation and enforcement of governing documents, assessment collection, construction defect litigation, and reconstruction issues. Jon has participated in and been lead counsel on many construction defect cases resulting in multi-million dollar settlements. He advises Associations on risk management and complex insurance and contract issues.

Jon has taught as an adjunct professor of law at California Western School of Law. He is past president of both the San Diego Chapter and the Greater Inland Empire Chapter of the Community Associations Institute (CAI), and has testified as an expert witness in community association-related issues. Additionally, Jon was a contributor to the Continuing Education of the Bar Publication “Advising California Common Interest Communities.” He acts as a law faculty instructor for the Community Associations Institute.

Jon has also been an active member of the California Association of Community Managers (CACM), was a member of the Professional Standards Committee, and has been appointed to the CACM faculty. He is a member of the San Diego County Bar Association, the Foothills Bar Association, and the College of Community Association Lawyers. Jon has been honored with the Distinguished Service Award by both the San Diego Chapter and the Greater Inland Empire Chapter of the Community Associations Institute, and has received the CAI National Hall of Fame Award. He has been the co-chair of the Committee on Common Interests Subdivisions for the State Bar, and has acted as a probation monitor for the State Bar.

Practice Areas: community association counsel, construction defect litigation, civil litigation, mediation
Rule Adoption & Enforcement

By Karyn Larko, Esq.

Is your Board unsure as to what kind of rules it can and should adopt? Are there questions regarding the procedure the Board must follow when adopting rules, or enforcing the rules that have been adopted? Is your Board facing an uphill battle in enforcing the Association’s governing documents against certain members and/or in enforcing specific governing document provisions? Join this Q and A session to discuss these and other related issues.

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Karyn A. Larko
klarko@epsten.com

Karyn Larko joined Epsten Grinnell & Howell, APC after graduating cum laude from California Western School of Law in 2007. While attending law school, Karyn worked as a law clerk for Ezekiel Cortez, a prominent federal criminal attorney in San Diego.

Karyn has more than fifteen years of business management, marketing and public relations experience. She has worked for both start-up and multi-national firms in California and abroad. Most recently, Karyn was an executive with Creation Integrated Media, the marketing arm for one of San Diego's larger public corporations. As a result of her substantial business experience, Karyn possesses well-honed communication, problem solving and conflict resolution skills, which will be of particular benefit in the practice of community association law. Karyn will assist the firm's Homeowner Association clients with covenant and rule enforcement, document interpretation, maintenance and easement issues, dispute resolution, and other matters.

Karyn holds a Bachelors degree in Commerce and Administration with a major in Marketing and Business Operations from Victoria University, Wellington, New Zealand. She is a member of the State Bar of California and the San Diego County Bar Association.

Practice areas: community association counsel
Rental Units

By James F. Danow, Esq.

Can the Board of Directors pass a rule restricting the renting of units? Can the Association charge a landlord fee for renting his or her unit because tenants cause more problems? Can the Board of Directors enact rules restricting the rights of tenants? Can the Association evict an undesirable tenant? These questions and a number of others will be addressed and discussed.

DISCLAIMER: The opinions in the presentations and materials are Epsten Grinnell & Howell, APC’s suggestions and opinions on general legal issues involving community associations and may not be relied upon in addressing any association’s specific legal questions. Your association and management firm may have developed varying and different policies and procedures which fully satisfy all applicable law.
Jim Danow attended the University of California at Berkeley. After establishing a background in engineering, he received his B.S. in business administration in 1966, and an M.B.A. in 1967. After graduation, he worked in economic research for the Federal Reserve Bank of San Francisco and, later, as a stockbroker with Dean Witter.

Jim graduated cum laude from Thomas Jefferson School of Law in 1977. He then joined the land use firm of Milch, Wolfsheimer & Wagner, where he represented developers while also acquiring litigation skills. In 1985, Jim joined Hyatt & Rhoads, a preeminent national firm specializing in community association law. As a senior litigator, he handled all facets of association litigation, from CC&R enforcement to construction defects. He also developed a broad expertise in all aspects of community association law. Jim joined what was then Epsten & Grinnell, APC in 1991, and is now a shareholder of the firm focusing on CC&R enforcement, litigation, and general association representation.

Jim has lectured extensively on a variety of community association topics, has developed a library on virtually all association subjects, and has testified as an expert witness on association issues. Jim is an active member of the Community Associations Institute. He served on the staff of Common Assessment Magazine for over ten years, and is the recipient of several Author of the Year awards from the San Diego Chapter of the Community Associations Institute.

Practice Areas: community association counsel, assessment recovery
STICKS AND STONES
DEFAMATION AND THE ASSOCIATION
MARY M. HOWELL, ESQ.
Sticks and Stones: Defamation and the Association

By Mary M. Howell, Esq.

I. Introduction

II. What IS defamation? Defamation is either "slander" or "libel." Slander is spoken; libel is written. To plead and prove up an action for defamation, the victim must show:

a. Publication to a third party
   --Comments solely between "defamer" and victim are not "published"

b. Intentional publication
   ----If comments between the "defamer" and the victim are accidentally overheard by another, the action for defamation fails. Haley v. Casa Del Rey Homeowners Ass'n. (2007) 153 Cal.App.4th 863.

c. Statement of "fact" which is false
   --Includes any "writing, printing, picture, effigy, or other fixed representation ... that exposes any person to hatred, contempt, ridicule or obloquy or that causes him or her to be shunned or avoided or that has a tendency to injure the person in his or her occupation." Civil Code 45.
   --Must be a "provably false factual assertion," that is, you have to be able to prove that the statement is false. Often used to exclude "opinion" (see discussion of "opinion" infra at VII, Krinksy v. Doe 6.)

d. Not privileged
   --Defamation is a "disfavored tort" in the United States, meaning that the law has allowed defenses against the action to facilitate larger social concerns. "Privilege" is a defense to defamation, which evolved out of America's overweening adoration of the notion of "free speech." Briefly, "privilege" is the notion that one should be able to say anything, true or false, about someone if some social purpose is served.
   --Privilege, absolute and qualified:

      In some circumstances, statements are "absolutely" privileged. That means, even if the statement in intentionally false, and made with malice, no damages may be awarded for the falsehood.
The publications which are absolutely privileged are statements made as part of an official duty, statements made before the legislature or in a judicial proceeding, reports to the legislature or complaints to a public official. The basis for an "absolute" privilege is that the importance of the communication is so great that the law should not permit the speaker to be discouraged by the threat of civil liability.

In other cases, more relevant to association proceedings, a communication of "qualifiedly privileged" when it is made without malice, to a person interested therein. CC 47(c). The privilege may pertain to communications between persons who share a common interest, between persons in a 'special relationship', and by one who is requested by the interested person to give the information. However, even statements made between these persons may be defamatory if the false statement is made *maliciously.* "Malice" in this case is "ill will beyond the normal feeling toward a wrongdoer" or a statement made by a defendant who "knows the statement is false or has no reasonable ground for belief in the truth of the statement."

e. Causes damage

--Normally the victim must prove "special damage," that is, that he has suffered some injury. If, however, the statement is defamatory "on its face," no proof of special damage is required. To be defamatory "per se" (that is, defamatory on its face, without the necessity of explaining that it was defamatory or that it referred to the victim), the statement must be of a particular sort (for example, charges of criminal conduct, or character defect, such as saying the person was unchaste, or incompetent in his chosen profession). Epithets and derogatory suggestions that carry with the implication of acts of misconduct are actionable.

III. What is "invasion of privacy"?

To plead and prove an action for "invasion of privacy" the victim must prove (a) public disclosure of private (although *true*) information about the victim or (b) statements which tend to paint the victim in a false light, and (c) damage. The damage which must be proved is different from defamation: in privacy actions, the damage is "mental and subjective. It impairs the mental peace and comfort of the person and may cause suffering much more acute than that caused by a bodily injury." *Fairfield v. American Photocopy Equipment Co.* (1955) 138 Cal.App.2d 82, 86.

The action is subject to the same privilege defenses as defamation.
IV. What is "intentional infliction of emotional distress"?

To plead and prove an action for "intentional infliction of emotional distress," the victim must prove (a) outrageous behavior, which (b) results in severe emotional distress ["emotional distress of such substantial quantity or enduring quality that no reasonable man in a civilized society should be expected to endure it." *Fletcher v. Western Nat. Life Ins. Co.* (1970) 01 Cal.App.3d 376.] The conduct must be intentional or reckless, and directed primarily at the victim.

The action is subject to the same privilege defenses as defamation.

VI. Anti-SLAPP motion

An "anti-SLAPP" motion (SLAPP = "strategic lawsuit against public interest") is a motion brought by a defendant immediately after a lawsuit is filed, which attempts to persuade the court to dismiss the lawsuit because it was brought to chill the defendant's First Amendment rights. In order to win an "anti-SLAPP" motion, the defendant must first show that the challenged cause of action is based on protected speech, either (a) before or in conjunction with legislative, executive or judicial proceedings, or (b) in a public forum in connection with a public issue. If defendant succeeds in this regard, the burden then shifts to the plaintiff, who must demonstrate probable success on plaintiff's claim. If plaintiff persuades the court that he will likely succeed, then the action may continue.

In the association context, many if not most of the defamation cases are disposed of by means of an anti-SLAPP motion. In the association context, statements made at board meetings are made "in a public forum" (*Damon v. Ocean Hills Journalism Club*, *infra*.). Further, statements made about management of the association is a matter of "public interest," especially when a large, powerful organization may impact the lives of many individuals... (*Ibid.*.) Accordingly, in most cases where a manager or director brings an action for defamation, he/she can anticipate an anti-SLAPP motion, and will have to demonstrate the probable success of his suit at a very early stage in the proceedings, before any discovery has taken place.

See also *Healy v. Tuscany Hills*, *infra* [attorney's statement to all homeowners that plaintiff-homeowner's denial of access for maintenance has necessitated costly litigation held privileged and therefore unlikely to succeed]; *Damon v. Ocean Hills Journalism Club*, *infra* [libel suit based on criticism of manager published to homeowners and others was "public forum" speech, subject to an anti-SLAPP motion]; *Ruiz v. Harbor View Community Ass'n*, *infra* [defamation suit based on Association's attorney's letters to homeowner subject to anti-SLAPP motion].
VI. Can a director or manager successfully sue a homeowner for defamation?

It's difficult. In *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, a former manager sued an association club, and homeowners and directors, for alleged defamation arising from articles critical of him which were published in the club's newsletter, and statements made by the directors in annual and member meetings. The defendants responded with an "anti-SLAPP" motion and prevailed. The court held that the statements in the newsletter (though it was not the official association newsletter) and the statements made in the meetings were statements "in a public forum" and concerned a matter of "public interest." Interestingly, however, the court did not address the other provision of the anti-SLAPP statute, viz., that after the public forum/public interest prong is satisfied, the plaintiff may still continue with the action if plaintiff can show a likelihood of prevailing at trial.

VII. Can a director or manager proceed against an "anonymous" web poster?

The answer appears to be "yes", procedurally (see, e.g., *Krinsky v. Doe 6* (2008) 159 Cal.App.4th 1154, and *Tendler v. www.jewishsurvivors.blogspot.com* (2008) 164 Cal.App.4th 802), however, discovery proceedings directed at the ISP to ascertain the true identity of the poster may be fruitless in light of a First Amendment right to speak anonymously on the internet. In *Krinsky*, a director of a corporation who was "flamed" on an internet chat room sought to subpoena from Yahoo the identity of the "flamer." The court articulated a standard which, if satisfied by the victim, can result in mandating disclosure of the identity of the flamer. Essentially the victim must show that the posting was "mixed opinion", that is, not merely an "irrational, vituperative expression of contempt," or "juvenile name-calling." A reasonable reader must take the statements seriously.

VIII. Can a homeowner successfully sue a director or manager for defamation?

Possibly, but the homeowner will have to show all the elements of defamation, including the absence of any privilege. In *Ruiz v. Harbor View Community Association* (2005) 134 Cal.App.4th 1456, the homeowner (an attorney) sued the Association and its attorney for libel, based on two letters the attorney had written to the homeowner. The Association and its attorney filed an anti-SLAPP motion. After the trial court granted the motion, the appellate court ruled that one of the letters was potentially libelous (because it had accused the attorney of unethical behavior), but that there was no evidence that the letter had been published to the public. As to the second letter, which said the homeowner was "seeking a Shakespearian pound of flesh", "making cockamamie document requests" and that he was "virtually stalking" the directors, the letter was comprised of "rhetorical hyperbole, epithets, and figurative statements" (and therefore, not libel.)
In *Healy v. Tuscany Hills Landscape & Recreation Corp* (2006) 137 Cal.App.4th 1, the homeowner sued the Association for libel after the association's attorney sent a letter to all residents of the association, telling them that the homeowner's refusal to allow access to her property for maintenance purposes had resulted in a lawsuit, which was costing the association's residents money. The homeowner claimed the statements were false, because it gave the impression there was no other way to access the maintenance area. The Association filed its anti-SLAPP motion, and after the trial court denied the motion, the Association appealed. The DCA reversed, indicating that the statements, even if false, were privileged because the letter "expressly refer[s] to the litigation arising from [the homeowner's] prohibition on ingress and egress for weed abatement purposes..." The court reasoned that the purpose of the letter was to inform residents of pending litigation involving the Association, it was circulated "in connection with" judicial proceedings and therefore privileged. Since this meant the homeowner could not succeed on her libel claim, the DCA reversed, granting the anti-SLAPP motion (and exonerating the Association.)

IX. Can the association successfully sue for defamation of its manager or director?

The answer is, generally, "no." In *Palms Springs Tennis Club v. Rangel* (1999) 79 Cal.App.4th 1, the association brought an action for defamation based on statements of a homeowner which were critical of board members. The association alleged that the statements were false, and exposed the association to "hatred, contempt, ridicule and obloquy," reflected poorly on the association and its board, and concerned the performance of the directors in their official capacity, and finally, had a deleterious effect on the association's ability to attract qualified board members. Nevertheless, the court (after agreeing that corporations may bring actions for defamation) concluded that, "if language written about a corporate officer cannot be interpreted as saying anything about the way that officer performs his or her duties and responsibilities as an officer of the corporation, so as to have a natural tendency to affect the corporation disadvantageously in its business, the corporation has no right of action. Stated another way, words written about a corporate officer give no right of action to the corporation unless spoken or written in direct relation to the trade or business of the corporation."

X. Can the association sue someone for defaming the association?

Generally, the answer is "no." A corporation can sue for defamation, but it must show that the statement has a tendency to injure its "business reputation." A nonprofit corporation can sue for defamation provided it can show that it relies on the public for financial support. An HOA cannot normally show such losses.
Can you sue the ISP who fails to police the chat room? Again, the answer appears to be "no." ISP's are protected from this type of liability by the federal "Communications Decency Act" (47 USC 230;) in Barrett v. Rosenthal (2006) 40 Cal.4th 33, the California Supreme Court construed that federal statute to protect providers and users of an interactive computer service from liability for defamation, reasoning that to do so would tend to chill online speech.

XI. Relief to prevailing party?

a. If you win, is there insurance?

Possibly not as to the homeowner. In Stellar v. State Farm Gen'l Ins. Co. (2007) 157 Cal.App.4th 1498, plaintiffs had tendered to State Farm (the issuer of their homeowners' policy) the defense of an action against them for defamation. The complaint alleged that the false statements were made "willfully' and "intentionally.' State Farm rejected the tender, based on the policy's definition of a covered occurrence as "an accident." On appeal, the court agreed that the policy did not extend to defense of a defamation claim:

"Relying on the definition of "accident" as construed by the California courts, the court in Allstate Ins. Co. v. LaPore (N.D.Cal. 1988) 762 F. Supp. 268 held that an insurer owed no duty to defend its insured in a defamation action because the insured's allegedly defamatory statements were not accidental. The court explained: "Defamation, which includes libel and slander, is [an] intentional tort which requires proof that the defendant intended to publish the defamatory statement. [Citation.] The very nature of defamation precludes the conclusion that it can occur 'accidentally.' " (Id. at p. 271, italics omitted; see also Tradewinds Escrow, Inc v. Truck Ins. Exchange (2002) 97 Cal.App.4th 704, 714 [citing Allstate Ins. Co. v. LaPore, supra, 762 F. Supp. 268 with approval in ruling that a defamation claim would be excluded from coverage because such a tort cannot occur accidentally].) ... On the basis of this authority, the trial court properly ruled that State Farm owed no duty to defend appellants."

As to an association, the association's D&O policy will frequently cover alleged defamation by directors, managers, etc. Thus the Farmers D&O policy (the "Personal and Advertising Injury" portion of the policy) typically defines such injury as including "oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services..." Please note, however, that there is an exclusion when the oral or written publication is done "by or at the direction of an insured with knowledge of its falsity."
b. Generally, a victim cannot get an order enjoining future speech.

"An order prohibiting a party from making or publishing false statements is a classic type of unconstitutional prior restraint. [citation omitted] 'While [a party may be] held responsible for abusing his right to speak freely in a subsequent tort action, he has the initial right to speak freely without censorship.' [citation omitted] The California Supreme Court recently recognized this fundamental principle, but held the rule does not apply to an order issued after a trial prohibiting the defendant from repeating specific statements found at trial to be defamatory. Balboa Island Village Inn, Inc. v. Lemen (2007) 40 Cal.4th 1141, 1155-1156." Evans v. Evans (2008) 162 Cal.App.4th 1157.

Thus, in general, before a victim of defamation can obtain an order restraining such speech, a court must rule that defamation has occurred, and any order must be limited to the specific items found to be defamatory at trial.

In the Evans case, husband and wife were in the midst of divorce proceedings. Wife posted "confidential information" about husband on the internet, in addition to accusing husband of child abuse and physical abuse of the spouse. Husband sued for defamation and in that suit, asked for a restraining order against further disclosures and postings. Although the trial court granted the restraining order, the appellate court overruled the grant of the restraining order. The appellate court noted that as to the allegation wife had posted "confidential information" on the internet, it might be appropriate to issue a restraining order, but that husband had failed to show that what was posted was confidential in nature.

The appellate court remanded the matter back to trial court, directing it to reevaluate husband's request, and to determine whether the information husband sought to keep private was sufficiently confidential, such that his right to privacy outweighed wife's right to free speech. The court noted that a "compelling reason" to hold material was confidential 'includes, but is not limited to, facts showing the disclosure of information would jeopardize the personal safety of [husband] or his family and/or would lead him to fear for his of his family's personal safety."

XII. Can a victim obtain a restraining order based on harassment, as opposed to defamation?

In general, the answer is "no." While Code of Civil Procedure Sections 527.6 and 527.8 allow the victim or the association as "employer", respectively, to obtain various types of restraining orders, both are of limited use in the situation where only verbal abuse has taken place. Section 527.6 allows an individual who has suffered "harassment" to obtain a restraining order, and harassment includes "a knowing and willful course of conduct that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose." And, while the "course of conduct" includes "making harassing telephone calls to the victim, sending harassing correspondence to the victim, or faxing or emailing the same, " the section goes on to add "Constitutionally protected activity is not
included within the meaning of 'course of conduct.'" Section 527.8 describes "harassment" in similar terms, and also defines "employee" to include "a volunteer ... who performs services ..." and "members of boards of directors of private ... corporations..."

However, as with Section 527.8, this section states that it does not permit a court to issue an injunction 'prohibiting speech or other activities that are constitutionally protected, or otherwise protected by ... any other provision of law.'

Also, the application for a restraining order is subject to the same anti-SLAPP protections afforded actions for defamation and invasion of privacy. *Thomas v. Quintero* (2005) 126 Cal.App.4th 635

Note that if the speech is "private", that is, "between purely private parties, about purely private parties, on matters of purely private interest," (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1409) injunctive relief may be appropriate, even if the victim is not entitled to stop the same statements made to other homeowners.

XIII. Conclusions

Lone rangers (Le Parc), anonymous posts, unofficial websites, chat room flame fests and ugly letters--and no relief in sight? Consider:

Giving the defamer enough rope to hang himself, packing the pews
Reporting threats to the police
Keeping track of where the statements go, who sees them
Response? Maybe not?
DEBT COLLECTION QUICKSAND
TRAPS FOR THE UNSUSPECTING MANAGER OR DIRECTOR

THOMAS S. GATLIN, ESQ.
DEBT COLLECTION QUICKSAND
TRAPS FOR THE UNSUSPECTING MANAGER OR DIRECTOR

By Thomas S. Gatlin, Esq.

I. Introduction

II. Fair Debt Collection Practices

A. The Traps

1. Pre-Lien Letter Requirements
   a. General description of collection and lien enforcement procedures
   b. Itemized statement of charges
   c. Statement of non-liability for charges, interest and costs of collection if assessment paid on time
   d. Right to request a meeting with board
   e. Right to dispute debt through IDR
   f. Right to request ADR before foreclosure
   g. Copies of letters to all secondary addresses

2. Liens
   a. Before recording lien, must offer IDR
   b. Before beginning foreclosure, must offer IDR or ADR (owner’s choice)
   c. Resolution in open session meeting, recorded in meeting minutes
   d. Including improper amounts – fines or reimbursement costs
   e. Mail recorded lien within 10 days after recording (certified mail)
   f. Record lien release within 21 days of payment in full

3. Payment Plans
   a. Must provide standards for payment plans, if they exist
   b. Must meet with owner within 45 days of request

4. Fair Debt Collection Practices Statutes
   a. Communicating with anyone other than the debtor without consent of debtor
   b. Communication with debtor at place of business
c. Communicating with debtor if known debtor is represented by attorney
d. Failing to notify debtor in initial communication that communication is attempt to collect a debt
e. Failing to notify debtor in subsequent communications that communication is from a debt collector
f. “Harassing” debtor by publishing list of debtors
   1) Finance Committee?
g. Making false or misleading representations
   1) Stating lien or foreclosure has started if it has not
   2) Stating actions will be taken if no intention to do so
h. Failing to provide “validation notice” within 5 days of initial communication
i. Failing to verify debt once disputed

B. The Quicksand – Penalties

1. Civil Code §1367.1
   a. Start completely over, including pre-lien notice
   b. Cannot charge owner for improperly recorded lien, interest, costs of collection
   c. Release improper lien within 21 days
   d. Provide owner with declaration that lien improperly recorded plus copy of lien release

2. Federal Fair Debt Collection Practices Act
   a. Debtor's actual damages
   b. Additional damages up to $1,000
   c. Class actions – lesser of $500,000 or 1% of debt collector’s net worth
   d. Attorney’s fees and court costs

C. The Solutions

1. Check title through public sources
2. Do not include fines or other improper charges in pre-lien or lien
3. Review and comply with Davis-Stirling statutory requirements
4. Include validation notice in initial communications with debtor – ensure no conflicting language
5. Include phrase “This is a communication from a debt collector” in all communications
6. Do not communicate with third parties about debt
7. Do not communicate with debtor if represented by counsel
8. Establish payment plan criteria in advance and apply consistently
III. Bankruptcy

A. The Trap – the Automatic Stay

1. 11 USC §362

2. No specific requirement for notice of pending bankruptcy, but violations must be “willful”

3. Post-petition “abandonment” of property
   a. 2005 amendment to 11 USC §523(a)(16)

B. The Quicksand – Penalties

1. Actual Damages

2. Attorney’s Fees and Costs

3. Punitive Damages / Sanctions

C. The Solutions

1. Pay attention to notices received – immediately stop all collection actions

2. Get legal counsel involved

3. Split account into pre-petition and post-petition amounts – mail only the post-petition statements

4. Subscribe to and check http://pacer.psc.uscourts.gov

D. Case study #1

E. Case study #2
## ASSESSMENT RECOVERY TIMELINE

By Debora M. Zumwalt

### Pre-Delinquency:

<table>
<thead>
<tr>
<th>30-90 Days Prior to Beginning of Fiscal Year:</th>
<th>Operating Budget and Statement Describing the Association’s Policies and Practices in Enforcing Lien Rights and Distributed to Members</th>
<th>Civil Code §1365</th>
</tr>
</thead>
<tbody>
<tr>
<td>60 Day Period Preceding Beginning of Fiscal Year:</td>
<td>Mandatory Assessment Disclosure Notice Distributed to Members</td>
<td>Civil Code §1365.1</td>
</tr>
<tr>
<td>30-60 Days Prior to Due Date:</td>
<td>Notice of Increase in Assessment</td>
<td>Civil Code §1366(d)</td>
</tr>
</tbody>
</table>

### Delinquency (Nonjudicial Foreclosure):

<table>
<thead>
<tr>
<th>Day 1:</th>
<th>Monthly Assessment Payment Due</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Day 15:</td>
<td>Monthly Assessment Payment Delinquent; Late Charge Assessed</td>
<td>Civil Code §1366(e)(2)</td>
</tr>
<tr>
<td>Day 25:</td>
<td>Warning of Lien Letter (may be sent any time after Day 15)</td>
<td>Civil Code §1367.1(a)</td>
</tr>
<tr>
<td>Day 30:</td>
<td>Interest Assessed</td>
<td>Civil Code §1366(e)(3)</td>
</tr>
<tr>
<td>Day 40:</td>
<td>If Owner Disputes Debt in Writing, Board Must Respond Within 15 Days</td>
<td>Civil Code §1367.1(c)(1)</td>
</tr>
<tr>
<td></td>
<td>If Owner Requests Board Meeting to Discuss Payment Plan, Board of Directors Must Meet with Owner Within 45 Days</td>
<td>Civil Code §1367(c)(2)</td>
</tr>
<tr>
<td>Day 60:</td>
<td>Record Lien</td>
<td>Civil Code §1367.1(d)</td>
</tr>
<tr>
<td>Day 70:</td>
<td>Last Day to Mail Copy of Lien to All Record Owners</td>
<td>Civil Code §1367.1(d)</td>
</tr>
<tr>
<td>Day 90/Account Delinquent $1800 or 12 Months in Assessments Only:</td>
<td>Notice of Board’s Decision to Foreclose</td>
<td>Civil Code §1367.4(c)(3)</td>
</tr>
<tr>
<td>90+ Days Later</td>
<td>Record Notice of Default</td>
<td>Civil Code §1367.1(g)</td>
</tr>
<tr>
<td>30 + Days Later</td>
<td>Sale</td>
<td>Civil Code §2924(f)</td>
</tr>
<tr>
<td>90 Days After Sale</td>
<td>Right of Redemption Expires</td>
<td>Civil Code § 1367.4(c)(4)</td>
</tr>
<tr>
<td>Within 21 Days of Receiving Payment in Full:</td>
<td>Record Lien Release</td>
<td>Civil Code §1367.1</td>
</tr>
</tbody>
</table>
CALIFORNIA CIVIL CODE REQUIREMENTS FOR LIEN AND FORECLOSURE APPROVALS

I. Approval of Lien

For liens recorded on or after January 1, 2006, the decision to record a lien for delinquent assessments shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an open meeting. The board shall record the vote in the minutes of that meeting.

California Civil Code Section 1367.1(c)(2)
Page 95 of Epsten Grinnell & Howell, APC 2009 Resource Book

☐ Approved by majority of the Board
☐ In an open meeting
☐ Vote recorded in minutes of that meeting

II. Approval of Foreclosure

The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an executive session. The board shall record the vote in the minutes of the next meeting of the board open to all members. The board shall maintain the confidentiality of the owner or owners of the separate interest by identifying the matter in the minutes by the parcel number of the property, rather than the name of the owner or owners. A board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

California Civil Code Section 1367.4(c)(2)

☐ Approved by majority of the Board
☐ In executive session
☐ Vote recorded in minutes of next open meeting
☐ Property identified by parcel number in the minutes
The process of collecting delinquent assessment accounts requires an aggressive, yet flexible, approach. Frequently, the proper approach for one Association is less effective for another. As a very general outline, the following steps are followed to collect delinquent assessment accounts. Following recordation of a lien, Associations can generally take one of two courses of action to collect delinquent assessments. The first option is non-judicial foreclosure. The second option is to file a lawsuit against the owner for the costs of collection, including the delinquent assessments, late charges, interest and legal fees owed.

1. Warning of Lien Letter and Lien. The California Civil Code requires that before an Association records an assessment lien, it must provide certain information to the delinquent owner via certified mail. The next step is recording a lien against the property in accordance with the provisions of the California Civil Code, the Association's governing documents and the Association's collection policy. The lien must be approved by a majority of the Board of Directors in an open Board Meeting and recorded in the minutes of that meeting. We recommend recording a lien in nearly every case where the delinquent owner is still the owner of record. Recording a lien protects the Association if the owner sells the property, and ensures "secured creditor" status if the delinquent owner files bankruptcy. Sometimes delinquencies are brought current after a lien is recorded, without the need for further enforcement action.

2a. Non-judicial Foreclosure. Following recordation of a lien, the Association's first option is to non-judicially foreclose on the lien, if the assessments are delinquent $1,800 or for 12 months. In those cases where the Board of Directors determines (based on our advice) that a foreclosure is appropriate, a three-step process is involved. First, the decision to foreclose must be made by a majority of the Board of Directors in executive session. The vote must be recorded in minutes of the next open meeting, referring to the property by parcel number. The owner must then be notified of the Board's decision to foreclose in the method required by the Civil Code. Once a foreclosure is properly authorized, a Notice of Default is recorded, and a mandatory 90-day waiting period is initiated. During the 90-day period after the Notice of Default is recorded, the owner can "redeem" the obligation to the Association by paying all delinquent assessments, late fees, interest and cost of collection including legal fees owed. If the 90-day redemption period passes without the owner paying, a Notice of Sale can be recorded. Thereafter, a public sale of the property can be held as early as twenty-one days later. Non-judicial foreclosure sales of Association assessment liens are subject to a 90-day right of redemption following the foreclosure sale.

Non-judicial foreclosure can be effective in encouraging an owner to bring his or her account current, especially if the owner lives in the unit or is collecting rents, and especially if there is equity in the property. Throughout the foreclosure process, the
decision to foreclose is examined several times. For example, if a lender initiates its own foreclosure action shortly after the Association records its Notice of Default, it is often unwise to continue the Association's foreclosure, as the lender's foreclosure usually takes priority over the Association's. This usually occurs when there is no equity in the property. In such a case, we usually recommended that the Association file either a Small Claims or Superior Court action against the owner.

There are fees and costs associated with the non-judicial foreclosure process, including attorney's fees and trustee fees. Trustees' fees include the statutory trustee's fees, costs for certified mailing, recording, advertising and posting, and the cost of the Trustee's Sale Guarantee. These fees are ultimately the responsibility of the Association. If the owner brings the account current prior to the sale, these fees are reimbursed to the Association by the owner.

At the foreclosure sale, if nobody purchases the property, the Association would take title by default. The Association would not have to pay for it. Rather, it would "credit bid" its interest in the property (the amount of delinquent assessments, late charges, interest and costs of collection, including legal fees). The Association would take title subject to any liens which were recorded prior to the Association's lien. The foreclosure would eliminate any liens which were recorded subsequent to the Association's lien, with the exception of certain tax liens. Non-judicial foreclosure sales of Association assessment liens are subject to a 90-day right of redemption following the foreclosure sale.

One issue that may arise is whether the Association or a third party can obtain title insurance if it acquires title through non-judicial foreclosure. Title insurance is rarely an issue because the property is typically subsequently foreclosed on by the first trust deed holder, or the owner pays his obligation prior to sale. However, this issue could arise if the Association took title to the property and subsequently wished to sell it to a third party. In that case, the Association may be obligated to file a "quiet title action" in Superior Court to obtain a "Court-sanctioned" sale. In essence, it is the title insurance company's opinion that if the Court approves the sale, the title is more secure. The title companies worry that with non-judicial foreclosures there may have been errors in the sale process. Following a quiet title action, the Association should be able to secure title insurance.

Once the Association takes title to the property, it could try to sell the property or wait for a senior lien holder to foreclose. If the senior lien holder non-judicially forecloses and is unable to sell the property for enough to satisfy the amount due on its deed of trust, it cannot obtain this "deficiency" amount from the Association, unless the Association had expressly assumed the obligation. The Association is not required to pay back taxes on the property it acquires. However, if it does not do so, any tax liens on the property would remain. Once the Association takes title to the property, it is recommended that it carry insurance.
While there are many ramifications to non-judicial foreclosure, if there appears to be some equity in the property, the chances are greater that the owner will redeem his or her obligation to the Association prior to the sale.

2b. Lawsuit. If the delinquency is not at the threshold required for non-judicial foreclosure, or if at any point it is determined that the Association should not proceed with non-judicial foreclosure, a lawsuit in Superior Court may be selected as the best method of collecting the delinquency. This course of action will allow the Association to obtain a money judgment against the delinquent owner and, where appropriate, to perfect the Association's ability to sell the property to satisfy the judgment. A Superior Court lawsuit provides the Association with the most flexibility in selecting how to enforce the judgment and collect the money owed.

In deciding whether to file a lawsuit or proceed with non-judicial foreclosure, the Board should consider any of the owner's assets of which it is aware, such as employment income, income from a rental property, or a bank account. If the Board is not able to readily ascertain whether the owner has any assets which could be levied upon to satisfy a judgment, the Board of Directors could attempt to locate them through use of a private investigator. It is sometimes difficult to locate assets to satisfy a judgment. Also, a judgment is only effective through the date it is entered. Assessments, late charges, interest and costs of collection which accrue after the date of the judgment are not included in the initial judgment. The Association can file a second lawsuit to recover post-judgment assessments, late charges, interest and costs of collection. There are also procedures by which the Association can request that post-judgment interest and costs of collection be added to an existing judgment.

Small Claims. Small Claims Court can be a cost-effective method of obtaining a judgment, especially when the unit has already been foreclosed by the lender. Although Small Claims Court requires more effort on the part of the Association manager or Board members, the time required to obtain a judgment is reduced, and the cost of Small Claims is less than prosecuting a Superior Court lawsuit. Its primary disadvantage is that you cannot foreclose the lien on the property, but are limited to collecting the money directly from the owner. Further, in the unlikely event the Association does not prevail, an adverse judgment cannot be appealed.

The cost of preparing and serving a small claims lawsuit is minimal compared to a Superior Court lawsuit or even a non-judicial foreclosure. You cannot be represented by an attorney in small claims court, but your counsel can assist you in preparing for the hearing.

The cost of preparing and prosecuting a Superior Court lawsuit varies significantly depending on whether the delinquent homeowner contests the association's lawsuit. Uncontested lawsuits can cost about the same as a non-judicial foreclosure actions, while contested lawsuits can be much more expensive. You can be represented by an attorney in Superior Court, and most Superior Court lawsuits for recovery of assessment accounts are uncontested.
Enforcement of Judgment. If the assessment recovery process results in a judgment, the final step is to collect the money owed. If the owner is employed or has other assets, there are effective methods available to obtain payment. The debtor can be compelled to appear in court to answer questions relative to his or her employment, assets, and general ability to pay the judgment, or an investigator can be retained to ascertain this information. Again, each circumstance is different, and the best approach will depend upon each owner's specific circumstance.

By being aggressive in its collection efforts, an association can maintain a high rate of success in collecting delinquent assessment accounts. Unfortunately, all collection efforts must be tempered with the realization that it is a process of percentages. While recovery of most delinquencies is likely, there will always be a few who are able to escape payment or have no assets.

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15 U.S.C. §1692k

(a) Amount of damages. Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(a) Except as provided in subsection (b) . . . a petition filed under Section 301, 302 or 303 . . . operates as a stay, applicable to all entities, of –

(1) the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor . . .

(2) the enforcement, against the debtor or against property of the estate, of a judgment . . .

(4) any act to created, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case . . .

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case . . .

(c) Except as provided in subsections (d), (e), (f), and (h) . . .

(1) the stay of an act against property of the estate . . . continues until such property is no longer property of the estate;

(2) the stay of any other act . . . continues until the earliest of

   (A) the time the case is closed;

   (B) the time the case is dismissed;

   (C) if the case is a case under chapter 7 . . . or 13 . . . the time a discharge is granted or denied . . .

(k) (1) except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys fees, and, in appropriate circumstances, may recover punitive damages.
DEBT COLLECTION QUICKSAND
TRAPS FOR THE UNSUSPECTING MANAGER OR DIRECTOR
CASE STUDY #1

September 25, 2007 - Owner files Chapter 13 bankruptcy (HOA not listed in pleadings)

October 2007 – December 2008 - HOA continues to mail monthly statements to owner

December 30, 2008 – HOA files small claims case against owner

January 24, 2009 – Owner’s attorney telephones management and advises of on-going bankruptcy

January 27, 2009 – Owner’s attorney mails letter to management confirming bankruptcy and automatic stay

February 1, 2009 – HOA mails monthly statement to owner

February 10, 2009 – HOA dismisses small claims lawsuit

March 1, 2009 – HOA mails monthly statement to owner

April 1, 2009 – HOA mails monthly statement to owner

April 15, 2009 – Owner’s attorney mails second letter to management advising of violation of bankruptcy stay

May 1, 2009 – HOA mails monthly statement to owner

June 1, 2009 – HOA mails monthly statement to owner

June 4, 2009 – Motion for violation of bankruptcy stay filed with U. S. Bankruptcy Court
DEBT COLLECTION QUICKSAND
TRAPS FOR THE UNSUSPECTING MANAGER OR DIRECTOR
CASE STUDY #2

June 25, 2008 – HOA sends pre-lien letter

July 21, 2008 – HOA passes emergency special assessment

August 14, 2008 – HOA agrees to payment plan with owner

October 16, 2008 – Owner files Chapter 7 bankruptcy. HOA is notified

November 2008 – January 2009 – HOA sends monthly statements to owner. Account not split into pre-petition and post-petition

January 21, 2009 – Bankruptcy concludes – unsecured debts are discharged – HOA writes off all pre-petition amounts plus some post petition amounts

April 19, 2009 – HOA requests new pre-lien letter – advised of error on prior adjustment

April 30, 2009 – Account adjusted – adjustment is incorrect by $68.00

May 5, 2009 – Pre-lien letter mailed

May 21, 2009 – Letter received from attorney alleging violations of bankruptcy stay – failure to bill only post-petition amounts. Demanded $3,000 in damages
THE DARK SIDE OF LITIGATION

CARRIE TIMKO, ESQ.
THE DAR SIDE OF LITIGATION
By Carrie M. Timko, Esq.

Contrary to what is shown on television, when a lawsuit is filed, it does not proceed to trial the following day. The reality is that litigation is an expensive, relatively slow way to gain a homeowner’s compliance with the governing documents. Certainly, there are situations where filing a lawsuit is necessary; however, boards of directors of homeowners associations should have a full appreciation of the dark side of litigation before filing a lawsuit to avoid surprises along the way.

ONLY FOOLS RUSH IN

Before the board decides to file an enforcement action, consider less expensive options:

- **Internal enforcement procedures** – Has the board called the homeowner to a hearing and imposed discipline for the violation? Is the association’s enforcement policy effective?

- **Internal Dispute Resolution (“IDR”)** – Has anyone from the board tried to talk to the homeowner about the violations?

- **Alternative Dispute Resolution (“ADR”)** – Has the board offered ADR pursuant to Civil Code § 1369.520? (This is required before an enforcement action is filed, with limited exceptions).

WHAT IS TAKING SO LONG?

A typical lawsuit in San Diego County can take 1 ½ to 2 years from the time the lawsuit is filed to the time of trial. (There are certain circumstances where priority is granted, but those are not common). Unless a preliminary injunction is sought (an emergency motion requesting the court to stop something until the dispute can be decided at trial) or the case settles before trial, the board will likely have to wait until judgment is entered against the homeowner to gain compliance.

“TRYING” THE CASE BEFORE FILING THE COMPLAINT

Typically, whatever the board wants to sue the homeowner for has already happened before the decision to pursue a lawsuit has been made. It is critical that the attorney be made aware of every aspect of the dispute before a complaint is filed – whether good or bad. The board should not try to impress the association’s attorney by leaving out important facts that could be perceived as “bad” – the negative aspects will surface eventually. It’s better to be prepared to deal with them than to be surprised later.

The association’s entire file on the person being sued should be provided to the attorney before the complaint is filed. This includes all emails between the board and the association manager regarding that homeowner. These emails are not protected by any litigation privilege.
and may have to be produced to the opposing party during the course of discovery. If the board anticipates litigation, it should start including the association’s attorney on emails, or better yet, don’t email at all.

Be sure that witnesses are willing to testify in court. It is best to obtain a declaration outlining their testimony to preserve their accounts under penalty of perjury.

DON’T QUIT YOUR DAY JOB

A lawsuit requires a commitment of time from the board. A case cannot be handed over to the association’s attorney and forgotten. The board must aid in preparing discovery and gathering evidence. The board will have to be available for mediation and/or settlement conferences. Additionally, there is usually a good chance that defense counsel will want to take the directors’ depositions. Directors may be asked to testify at trial. At the very least, the board must be readily available for executive sessions with the attorney on short notice if important decisions need to be made about the lawsuit. These commitments may require the directors to take time off work or rearrange personal commitments.

MONEY, MONEY, MONEY, MONEY

A lawsuit is expensive. Attorney’s fees and costs can exceed any monetary damages sought from a homeowner fairly quickly. While a “prevailing party” to an enforcement action is entitled to attorney’s fees from the other party, such an award is not granted until after the case has been tried and judgment has been rendered. If and when an award of attorney’s fees gets paid by the homeowner is another matter entirely.

JUDGE DREAD

Most enforcement actions are tried by a judge rather than a jury. As a result, the fate of an association’s case rests in the hands of the judge that is randomly assigned to the case when it is filed. Depending on how a judge views the applicable law and the equity, or “fairness” of the case, he/she can find ways of deciding in favor of one party or another. Even under the best circumstances, sometimes judges render decisions against the association.

IN IT FOR THE LONG HAUL

Sometimes, as the facts develop, what seemed like a strong case at the outset becomes weaker. At some point, the board may want to dismiss the lawsuit. Unless the defendant enters into a settlement agreement where both parties agree to bear their own attorney’s fees and costs, an early dismissal of the case could result in an award of attorney’s fees to the defendant as the prevailing party.

THORN IN THE SIDE

It is often said that opposing counsel decides how much the litigation will cost, and nothing could be more true. If the homeowner hires an attorney who is uneducated in the applicable areas of the law, or who is fond of being as difficult and uncooperative as possible, the association’s attorney’s fees can increase substantially.
WHEN NEIGHBORS BECOME ENEMIES

Lawsuits have a tendency to split otherwise peaceful communities into enemy factions. Some side with the board, some side with the homeowner. Consider the fact that everyone living in the association during the lawsuit will most likely be living there after the lawsuit. Remember too that today’s defendant can become tomorrow’s board president.

SHOW ME THE MONEY!

Assuming the association wins the case and is awarded a monetary judgment and/or an award for attorney’s fees and costs, it still has to collect it from the homeowner. This can be done a variety of ways, but is typically achieved through the recordation of an abstract of judgment against the homeowner and a levy on the homeowner’s bank accounts. The board should consider the amount of equity a homeowner has in his/her property if it is seeking a monetary judgment or is relying on recovering its attorney’s fees and costs. Often, a judgment will not be recoverable until the homeowner’s property is sold. Any primary creditor, such as a mortgage lender, will have priority over a subsequently recorded judgment.
HOA WATER CONSERVATION

KIERAN J. PURCELL, ESQ.
HOA WATER CONSERVATION

Background and Important Dates

Water Conservation in Landscaping Act Adopted

-January 1, 1990 - It required the State Department of Water Resources (DWR) to adopt a model water efficient landscape ordinance promoting water conservation in landscape design, construction, and maintenance.

-January 1, 1992 – deadline for DWR to adopt the model ordinance.
Background and Important Dates

-January 1, 1993 – deadline for cities/counties to adopt the model ordinance or submit findings explaining why it wasn’t unnecessary.

-If a city/county failed to adopt either the ordinance or submit findings, then the DWR’s model ordinance was adopted by default.
In 2004 the State Legislature convened a task force to recommend improvements to the DWR's 1992 model ordinance.

The result was the Water Smart Landscapes for California report that became the nucleus of Assembly Bill 1881 (AB 1881).

January 1, 2007 - AB 1881 was codified into law as Government Code Sections 50060-50070, 65591-65599 and Civil Code Sections 1353.8.
HOA WATER CONSERVATION

Background and Important Dates

What You Probably Know About AB 1881

Civil Code Section 1353.8 – which provides an HOA may not prohibit an owner’s use of low water-using plants regardless of what it says in its Architectural Guidelines
Other Aspects of AB 1881 That You May Not Know

1. **January 1, 2009** - DWR was required to update the model water efficient landscape ordinance and distribute it to cities/counties by January 31, 2009.

2. **January 1, 2010** – cities/counties must adopt either DWR’s model ordinance, or a local ordinance that is as effective as the DWR model ordinance.

   - If a city/county fails to do so, DWR’s model ordinance is adopted by default.
HOA WATER CONSERVATION

Background and Important Dates

3. January 31, 2010 – Cities/Counties must report to DWR whether they have adopted the model ordinance or their own ordinances.

4. January 31, 2011 - DWR must report to the State Legislature on the status of these local ordinances.
HOA WATER CONSERVATION

Background and Important Dates

5. **January 1, 2010** - The DWR is required to adopt regulations establishing performance/labeling standards and requirements for landscape irrigation equipment.

6. **January 1, 2012** – Sale of landscape irrigation equipment that does not meet these performance standards and requirements is banned.

7. **The year 2020** – The Governor has requested 20% per capita water consumption reduction by 2020.
HOA WATER CONSERVATION

Background and Important Dates

Local Level:
- The San Diego County Water Authority is working with the City/County to tailor a regional model ordinance.
- HOAs will have to meet permit/design criteria for new and refurbished landscaping.
- Financial incentives will be provided by SDCWA.

State Level:
- Proposing a water audit every five years for properties with over 2,500 square feet of landscaped area.
- Proposing basic parameters for reducing amounts of turf, increasing amount of drought tolerant planting, and improving irrigation efficiency.
HOA WATER CONSERVATION
Background and Important Dates

Pop Quiz

1. January 1, 2009
2. January 1, 2010
3. January 31, 2010
5. January 1, 2010
7. The Year 2020
HOA WATER CONSERVATION

New Legislation Effective January 1, 2009

• AB 474 - Contractual assessments: water efficiency improvements

• Expands existing laws to authorize public agencies to enter into voluntary contractual assessments with willing property owners to finance the installation of specified water efficiency improvements that are permanently fixed to residential real property. A voluntary contractual assessment for water efficiency improvements, and the interest and penalties thereon, shall constitute a lien against the property on which it is made until paid.

• Potential impact on your Associations
HOA WATER CONSERVATION

New Legislation Effective January 1, 2009

- AB 1061- Common interest developments: water-efficient landscapes.

- Expanded Civil Code section 1353.8's bar on prohibition of drought tolerant plants in Architectural Guidelines to all governing documents.

- Potential impact on your Associations
HOA WATER CONSERVATION

New Legislation Effective January 1, 2009


• Important Dates:
  – On or after January 2014 (for bldg improvements to single family residences to receive permit or NOC)
  – On or before January 2017 (replaced by all owners of single family residential property)
  – On or before January 2019 (replaced by owners of multi-family residential property)

• No Enforcement Arm, but checked during transfer of property

• Potential impact on your Associations
Due to court commitments the following attorneys were unable to participate in today's Legal Symposium
Douglas W. Grinnell
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Doug Grinnell is a shareholder in the law firm of Epsten Grinnell & Howell, APC. He graduated cum laude from the University of Delaware in 1976 with a degree in political science and received his law degree from Pepperdine University in 1978.

Doug has been an active trial attorney since 1979. From 1980 to 1984, he served as a trial attorney with the United States Navy. Since 1984, he has engaged exclusively in the representation of homeowners, community associations and consumers. He has been responsible for numerous class-action, multi-million dollar jury verdicts and settlements. Doug has handled more than 150 construction defect cases in California. In 1996, Doug was the recipient of the Outstanding Trial Lawyer Award for, what was then, the highest construction defect judgment ever in the State of California ($15.5 million).

Doug is a member of Consumer Attorneys of California (CAOC) and serves as Chairman of CAOC's Homeowners' Rights Committee. He is also a member of the San Diego County Bar Association, the Community Associations Institute (CAI), and the California Association for Community Managers (CACM). He has lectured frequently at Continuing Legal Education courses throughout California and has published many articles on the topics of construction defects and community association law.

An avid outdoors man, Doug enjoys running, biking, hiking, golfing and skiing.

Practice Areas: construction defect litigation

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Anne Rauch graduated magna cum laude from California State University, San Diego, with a degree in psychology in 1992, received her law degree from the University of San Diego School of Law (USD) in December 1995 and has practiced law in California since 1996.

Anne practices in the areas of general civil litigation including design and construction disputes, and litigation matters involving real estate transactions and property rights. She handles complex litigation matters and has honed her skills in civil law and motion practice to the benefit of Epsten Grinnell & Howell APC’s Association and Commercial clients who find themselves in litigation. Her work on civil writs and appeals has also resulted in three published opinions in her clients' favor, in Bodell Construction Company v. Trustees of The California State University (1998) 62 Cal.App 4th 1508 (representing the Trustees), in Re Marriage of Harris (2004) 34 Cal. 4th 210 (representing amicus curiae the Coalition for the Restoration of Parental Rights before both the Court of Appeal and the California Supreme Court), and most recently in Treo @ Keitner Homeowners Association v. Superior Court (2008) ___ Cal.App.4th___ (representing the Association in successfully defending the Association’s right to a jury trial in a dispute with the developer).
While in law school, Anne served as a Judicial Extern at the California Court of Appeal, Fourth District, Division One. She also served on the Board of Directors for the Women's Law Caucus at the University of San Diego School of Law, and in her third year of law school served as the liaison between the USD Women's Law Caucus and the Lawyer's Club of San Diego. Anne is now active in the legal community as a member of the San Diego County Bar Association, Community Associations Institute, and from 2000-2001 served as the Co-Chair of the Membership Committee for the San Diego Chapter of the Community Associations Institute. Anne is also active in the San Diego community as a member of The Thursday Club Professionals, a division of The Thursday Club, a philanthropic organization founded in Balboa Park in 1921 that supports multiple community service projects in San Diego each year.

Practice Areas: community association counsel, construction defect litigation, civil litigation